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REPORT
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FARM CREDIT ACT AMENDMENTS OF 1987

NOVEMBER 20 (legislative day, NOVEMBER 19), 1987.—Ordered to be printed

Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1665]

The Committee on Agriculture, Nutrition, and Forestry to which was referred the bill (S. 1665) having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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Brief Explanation

The major provisions of the bill are briefly described below.

TITLE I—FARM CREDIT SYSTEM ASSISTANCE, FINDINGS

Assistance to Borrowers and the System.—Title I of the bill contains the findings of Congress that the Farm Credit System is in need of assistance so that it can honor its obligations to farmers and ranchers who own stock, the FCS bond holders, and, in addition, continue to perform its vital role in providing credit to farmers, ranchers and farm cooperatives at reasonable and competitive rates. Many Farm Credit System institutions are at the brink—their borrower stock is seriously impaired and their ability to continue serving rural America's credit needs is endangered.

The current Capital Corporation, with its limited power to provide assistance, is replaced by the Farm Credit System Assistance Board. This new Board will consist of five members including two Cabinet officers—the Secretaries of Agriculture and Treasury. In addition the Board contains the Chairman of the Board of Governors of the Federal Reserve and two members appointed by the President with consent of the United States Senate.

The Board will provide financial assistance and guarantee the value of borrower stock by authorizing troubled System institutions to issue preferred stock which, in turn, will be purchased by a newly created Farm Credit System corporation—the Financial Assistance Corporation. The funds received from the sale of that preferred stock will be used by those distressed banks and associations to reduce interest rates and restore their economic viability.

Troubled System institutions may apply for such aid when stock held by farmers and ranchers is worth less than its par value. The Board must approve this assistance (the issuance of preferred stock) when the value of stock drops to 75% of par value, unless the institution is to be liquidated and replaced with another, more viable, institution.

The Board may require System banks and associations receiving assistance to change their credit and interest rate policies, replace management and reduce salaries.

Title I creates, as mentioned, the Financial Assistance Corporation as a related institution to the current Funding Corporation—using the same board of directors and employees, to save System and taxpayer money. This corporation creates two funds. The Assistance Fund will contain the proceeds from the sale of up to $4 billion in 15 year obligations—guaranteed as to principal and interest by the U.S. Treasury in amounts beyond that available in the Trust Fund outlined below. The obligations are to be issued in two phases of $2.8 billion and, if necessary, an additional $1.2 billion.

The other fund is the "Trust Fund" composed of a one-time assessment on System institutions designed to require the System to help itself to the maximum extent possible in exchange for the direct and indirect assistance provided in this legislation. This assessment (in the form of a mandatory stock purchase) is based on

the retained earnings of each and equals the amount by which each institution's surplus exceeds, in the case of a bank, 5% of assets and, in the case of an association, 13% of assets.

Title I requires that most of the assistance provided be paid back—after the System is healthy. To allow banks and associations time to build up their capital, the Treasury will pay the interest on the guaranteed bonds issued by the Financial Assistance Corporation—for the first five years. This will also reduce System costs and should reduce interest rates charged to farmers and ranchers.

During the second five years interest is shared equally by System institutions and Treasury (each System institution paying a proportionate share based on performing loan volume). To limit taxpayer exposure the maximum amount of interest paid by Treasury without repayment can not exceed $2 billion.

After this ten year period of assistance, the System pays all the interest on bonds issued by the Financial Assistance Corporation.

After 15 years the Trust Fund (the System's own reserve) is used to pay the principal due on the 15 year bonds and the remaining amount is to be individually refinanced by institutions that received assistance. (The refinancing obligations are not guaranteed by Treasury and may be issued without a collateral requirement.)

Assisting Farmers in Distress.—Title I also requires that System banks and associations receiving assistance must, in turn, assist troubled farmers and ranchers by restructuring their delinquent loans where that restructuring is less costly than foreclosure. Each Farm Credit System (FCS) District, that contains a System institution certified to receive assistance must establish a Special Asset Group to review each loan of a distressed farmer or rancher that is slated for foreclosure.

These restructuring procedures were modeled after the St. Paul FCS District's restructuring program—farmers had their loans restructured when that was beneficial both to the System and the farmer. This program has helped thousands of needy farmers *and* has generated income for the System. Applying these procedures nationally will help alleviate a major drain on the System, its $6 billion in nonperforming loans. These nonperforming assets are a double drain on the System—failing to earn much needed income and requiring interest payments by the banks to pay off the obligations issued when the loan was made.

Under this Title, to insure that farmers who should have their loans restructured are properly treated by local institutions, the Assistance Board will create a National Special Asset Council to monitor compliance with restructuring standards of this Title.

TITLE II—RESTRUCTURING THE FARM CREDIT SYSTEM

Future Insurance.—To help prevent another financial crisis, Title II requires in 1992 that the Farm Credit Administration, the independent regulator of the System, set up a Central Reserve Account funded by annual assessments of System banks not in excess of .15% of accrual loans and .25% of nonaccrual loans. The System is thus forced to protect itself against cyclic downturns in the farm economy.

The Account will assist System institutions in honoring their bond obligations and retiring borrower stock at par value—without taxpayer assistance.

Guaranteed Borrower Stock.—A critical purpose of Title II is to guarantee borrower stock, at par value, to protect the investments of farmers and ranchers in the System. All existing stock, all stock previously retired at less than par value, and all stock purchased within nine months after enactment, or, if earlier, prior to approval of the capitalization plan for the System institution, is fully protected.

Mergers.—Mergers of System institutions in the same District, and transfers of powers or assets, are permitted as long as approved by the Farm Credit Administration Board, the respective boards of directors of the affected institutions and a majority vote of voting stockholders. (Special reconsideration procedures exist for past and future mergers of associations.)

Permitting these mergers, at shareholder approval, will allow institutions to better pool their resources and improve their economic condition. (Current authority to merge across District lines continues to exist.) Title II also requires full and accurate disclosure of all relevant information to shareholders before they vote on any mergers.

Termination.—An institution may terminate its status as a System institution upon approval of the shareholders and the FCA Board as long as it pays to the Reserve Account the amount by which total capital exceeds 6% of assets.

TITLE III—CAPITALIZATION

The Farm Credit Administration, must issue regulations to establish minimum capital adequacy standards for all System institutions to assure the long-term viability of the System. To assure a smooth transition, System institutions shall have 5 years to phase-in their compliance with those standards.

Each bank and association shall establish by-laws, approved by majority vote, setting forth a capital structure providing for classes of stock and/or loan origination fees based on those capital adequacy standards. Voting stock shall cost, at a minimum, $1,000 or 2% of the amount of the loan, whichever is less.

TITLE IV—BORROWERS' RIGHTS

Title IV provides farmer-borrowers with important rights—including the right to advance written notice of certain proposed adverse actions, the right to loan information (regarding differential interest rates, loan origination charges, changes in interest rates and loan options) and the right of first refusal to repurchase or lease land formerly owned by a borrower that has been foreclosed on by a System institution. Providing borrowers with advance and accurate loan information will allow them to make better informed financial decisions.

Also, banks and associations will be required to use Credit Review Committees to review denials of new loans and restructuring of distressed loans. In order to both assist the institution, by creating earning assets, and to help the family farmer in all

System institutions, the distressed loans of family farmers must be restructured under Title IV if the cost of restructuring is less than the cost of foreclosure.

TITLE V—STATE MEDIATION PROGRAM

Many States have successful mediation programs which assist in resolving disputes between borrowers and agricultural lenders. These programs often aid both lenders and borrowers. Borrowers are given the opportunity to work out reasonable repayment schedules—leaving them with enough to provide adequate support for their families while working to make their farm operations profitable. Lenders benefit when nonpaying loans are turned at least in part to earning assets. These state programs help farmers and ranchers avoid bankruptcy—which can be costly for both borrowers and lenders.

However, many agricultural states are currently in financial stress. Title V thus provides Federal matching for states which set up agricultural mediation programs—up to a 50% Federal match, but not more than $750,000 per year for any state.

Existing mediation programs are eligible as long as certain basic requirements are met.

TITLE VI—FARMERS HOME ADMINISTRATION LOAN RESTRUCTURING

This Title applies the advantages of a loan restructuring program to the Department of Agriculture's Farmers Home Administration (FmHA). This will allow the Department to convert a lot of its nonperforming loans into paying assets. At the same time low-income farmers will be given a second chance—benefiting their rural communities and their families.

Under Title VI the Secretary of Agriculture must provide notice of all available loan service programs, including restructuring options, to each FmHA borrower who is 180 days delinquent on an FmHA loan and, also, before taking any adverse foreclosure action against a borrower. FmHA has 45 days from receipt of a request for loan restructuring or other servicing to approve or deny the request.

FmHA must establish a national appeals division to hear appeals of local decisions adverse to the FmHA borrower, for example, on restructuring.

To encourage farmers and their families to remain in their communities Title VI allows them a priority in the purchase or lease of their farmland acquired by FmHA through foreclosure. Four types of persons shall have this priority: the immediate previous FmHA borrower-owner, or spouse or child, operators of not larger than family-size farms, and Indian tribal members, tribal corporations or tribal councils regarding Indian reservation lands. This Title also establishes a demonstration program to use the existing FmHA interest rate buydown program to facilitate the sale of FCS inventory land to new and restarting farmers.

Title VI also provides certain farmers with "income releases" (releases of their income that would have been diverted to FmHA to satisfy an FmHA lien on the crops, livestock or other farm assets). Farmers who remain on the farm, whose FmHA loans were associ-

ated between November 1, 1985 and May 7, 1987 (farmers affected by the *Coleman v. Lyng* court decisions), shall be entitled to 12 months of income release for household and operating expenses (not in excess of $18,000 per year per borrower) if the borrower timely applies for loan restructuring. The income release shall continue after 12 months if the Secretary does not timely decide on the farmer's restructuring request. These provisions are intended to carry out the intent of the *Coleman* decisions in the context of this reform of FmHA practices.

The title also requires the Secretary to establish a program to modify delinquent FmHA loans to the maximum extent possible to avoid losses to the Secretary (with emphasis on the writing-down of principal and interest and debt set-aside) whenever this would facilitate keeping the borrower on the farm or ranch.

The title also calls for the creation, by the Secretary of Agriculture, of a program providing for a secondary market in the guaranteed portions of FmHA loans. This program is to be similar to the current Small Business Administration (SBA) program for SBA loans. This program should provide additional capital for rural banks to lend farmers and rural communities since loans guaranteed by FmHA can be sold into the secondary market. Local participating banks can use the money from those sales for additional agricultural lending.

TITLE VII—AGRICULTURAL MORTGAGE SECONDARY MARKET

Title VII provides for the creation of a secondary market for agricultural and rural housing loans to increase the availability of long-term credit at stable interest rates and to provide greater liquidity and lending capacity for agricultural lenders. Farm Credit System institutions, banks, insurance companies, savings and loan associations and other entities which qualify will be able to place qualified agricultural loans with agricultural mortgage marketing facilities. These facilities will pool the loans together and use the flow of income on those loans to provide a loss reserve at the pool level. The Federal Agricultural Mortgage Corporation created under the bill will guarantee the timely payment of principal and interest to purchasers of securities backed by those pools.

Local lenders will be able to sell these qualified loans to poolers thereby increasing their capacity to serve rural communities. Experience in other secondary market operations indicates that mortgage backed securities reduce contract interest rates, and competitive pressure from loans eligible for the secondary market should put downward pressure on conventional interest rates.

To oversee these operations, the Mortgage Corporation will be established with a 15 member permanent board: five members from the Farm Credit System, five from banks and insurance companies and five appointed by the President with the consent of the Senate. The key functions of the Mortgage Corporation are to: provide credit enhancement (by backing up the timely payment of principal and interest to securities holders), to create underwriting standards for loans eligible for pooling and to administer the standards under which System institutions, banks, insurance companies and other entities may become qualified facilities.

Federal sponsorship to the Mortgage Corporation is provided in the form of a line of credit under which the Treasury is authorized to loan the mortgage corporation up to $1.5 billion, subject to an appropriation, to carry out this title and to guarantee the timely payment of principal and interest on the securities.

TITLE VIII—MISCELLANEOUS

Title VIII has three major sections—it requires outside directors for Farm Credit System associations and for Farm Credit System District Boards of Directors, requires the Secretary of Agriculture to offer the right of first refusal to holders of loans sold under USDA asset sales programs, and provides for the placement of inventory land (held by the Farm Credit System or by the Secretary of Agriculture) into the USDA Conservation Reserve Program.

Each production credit association and each Federal land bank association shall develop procedures to elect one outside director to their board of directors. Farm Credit System district boards and the board for the Central Bank for Cooperatives shall also contain an outside director. The Committee is hopeful that receiving this outside input will improve the operation of the System.

Issuers of notes and obligations being sold under the Budget Reconciliation Act of 1986 would be given the opportunity to purchase any unsold notes and obligations for 30 days prior to the sale. The price would be determined by discounting the payment stream of the note at a market determined yield.

Title VIII also requires that the three-year ownership requirement, for placement of land into the Conservation Reserve Program, be waived with respect to highly erodible cropland that is administered, on the date of enactment, by a FCS institution, the Secretary of Agriculture or a private lender. For this eligible land put into the Reserve, the Secretary shall make payments to family farmers who purchase or lease such cropland and which enter into a contract to participate in this program. While the current conservation program is a success, much highly erodible land is held in inventories of private and public lenders. This title, which makes much of that land eligible, encourages the conservation of highly erodible land—helping increase farmer income while decreasing erosion at the same time.

BACKGROUND

Farmers and ranchers have five major institutional sources of credit. These are the Farm Credit System through its Federal Land Banks and Production Credit Associations; the commercial banks; the insurance companies; the Farmers Home Administration and the Commodity Credit Corporation.

The FCS is currently the single largest lender—at the beginning of 1987, the FCS held $45.5 billion of the $176 billion in farm debt outstanding. This accounts for 25.8% of the total, but shows a continuing decline in the FCS market share from their peak of 32.5% in 1981.

Overall, agricultural debt has declined substantially, from well over $200 billion in 1982, to only about $164 billion today. Even

more importantly, there has been a dramatic shift in who holds the farm debt.

Any discussion of agricultural credit must differentiate between the two major types of credit used by producers. This becomes even more important as we attempt to understand the problems of the Farm Credit System.

Non-real estate debt (operating and chattel loans) currently account for about one-half of the total debt outstanding, and while there has been a large decline in the volume of this debt, there has also been a wide shift in who actually holds the debt.

PERCENT OF OUTSTANDING FARM NON-REAL ESTATE DEBT HELD BY LENDERS—EXCLUDING FARM HOUSEHOLDS

[Agriculture Finance Datebook—Federal Reserve]

	1981	1982	1983	1984	1985	1986
Commercial banks (percent)	34.0	34.0	37.5	39.2	35.7	34.2
FCS (PCAs/FICBs)	23.2	20.0	19.6	18.8	14.8	12.2
FmHA	13.9	12.7	13.0	14.3	15.6	16.6
CCC	8.7	15.0	10.9	9.3	17.9	21.7
Individual/other	20.0	18.7	18.8	18.4	15.91	15.3
Total (in billions of dollars)	91.6	102.4	98.7	96.1	94.4	86.6

Real estate debt has seen a very similar decline in total volume, as well as a similar shift in market share. Once again the Farm Credit System finds itself losing both overall volume and market share. In fact, preliminary numbers for 1987 show the Federal Land Bank's share slipping to below 37 percent of the total.

PERCENT OF OUTSTANDING FARM REAL ESTATE DEBT HELD BY LENDERS—EXCLUDING FARM HOUSEHOLDS

[Agriculture Finance Databook—Federal Reserve]

	1981	1982	1983	1984	1985	1986
FCS (FLB)	41.4	43.3	43.3	43.9	42.4	39.0
Insurance Co.	12.4	11.7	11.4	11.3	11.3	11.4
Commercial banks	7.8	7.5	8.2	9.0	10.7	13.0
FmHA	8.0	8.2	8.3	8.9	9.8	10.6
Individual/other	30.1	29.0	28.7	26.8	25.8	25.8
Total (in billions of dollars)	97.2	101.2	103.7	102.9	97.5	89.4

History of the Farm Credit System

The current Farm Credit System was established in three stages between 1916–1933 to meet the unique credit needs of agricultural producers, and to address the financial problems they faced during the deteriorating agricultural economic conditions of the 1920s and 1930s.

The Federal Farm Loan Act of 1916 provided for the establishment of one Federal Land Bank (FLB) in each of 12 farm credit districts in the United States to make long-term mortgage loans through local associations in which the borrowers became members and stockholders. These banks were created because sufficient

credit for real estate purchases was not available on affordable terms.

The Agricultural Credit Act of 1923 added a Federal Intermediate Credit Bank (FICB) in each district to provide funds to commercial banks and other agricultural lenders for short-term operating loans. These banks were created because commercial banks were unable to meet farmer's production credit needs during the agricultural depression of the 1920's.

Responding to the financing difficulties which farmer cooperatives had faced in the 1920's, the Farm Credit Act of 1933 provided for the third component of the System, the Banks for Cooperatives (BCs). These were chartered to make loans to farmer marketing, purchasing, and business service cooperatives.

The Farm Credit Act of 1933 also established local Production Credit Associations (PCAs) to make short-term and intermediate-term production loans to farmers. Congress created these associations to channel funds directly to producers from each Federal Intermediate Credit Bank because private lenders were unable to meet the credit needs of many farmers during the Great Depression.

The three acts establishing the Farm Credit System were recodified into the Farm Credit Act of 1971, and minor amendments were made in 1980. The 1971 Act, as amended, authorizes all the activities of the Farm Credit System.

Description of the Farm Credit System

With about $50.4 billion of net loans outstanding as of September 30, 1987, the Farm Credit System remains the largest provider of credit to farmers, ranchers, and their cooperatives.

The System is comprised of 37 banks (a Federal Land Bank, Federal Intermediate Credit Bank and a Bank for Cooperatives in each of twelve districts and a Central Bank for Cooperatives) and about 375 local associations which deliver credit to farmers and ranchers. Each of these banks is a separate corporate entity tied to the other banks by the issuance of consolidated notes and bonds that are the joint and several liability of all 37 banks. These note and bonds are issued in the national financial markets to raise the capital to lend to qualified borrowers.

Each bank is owned by the associations, or cooperatives, within the district. The Farm Credit System is distinguished by its cooperative structure in which each member has an equal voice in the governance of the System. The principal objective of the System is to provide qualifying farmers and cooperatives with credit at the least cost.

Although System entities are not Government owned or controlled, the System is a "Government sponsored entity." This status affords it a preferred place in the money markets, even though the System's bonds and other debt instruments are not guaranteed by the Federal Government.

The institutions in the System are governed by boards of directors elected by the System's stockholders. Currently, to borrow from the System, a farmer must acquire stock equal to a predetermined percentage of the loan (typically 5 percent of the face value

of the loan for land bank loans and 10 percent for PCA production loans).

Each of the three Farm Credit banks in each district (land bank, intermediate credit bank, bank for cooperatives) are separate legal entities. Although the Farm Credit banks in several districts have operated with common management for many years, and other districts recently adopted common management for all three banks, the banks remain district entities.

The Federal land banks make loans through Federal land bank associations to producers and farm-related businesses. The loans range in duration from 5 to 40 years for land and other capital purchases. These loans are usually secured by a first lien on real estate.

Producers and farm-related businesses obtain short and intermediate-term credit from production credit associations. Funds for these loans are borrowed from the Federal intermediate credit banks. PCA loans cover seasonal operating expenses, improvements, farm equipment costs, livestock, storage facilities, and buildings.

The banks for cooperatives provide a complete line of credit services to agricultural and rural utility cooperatives.

The Farm Credit System (FCS) is regulated by the Farm Credit Administration, an independent agency of the Federal Government with powers similar to other Federal financial regulators. The Farm Credit Administration (FCA) is governed by a full-time three-person Board. Each member of which is appointed by the President and confirmed by the Senate.

Farm Credit System: Financial Condition

The FCS has been severely affected by the generally poor financial condition of the farm sector. FCS institutions reported $12.7 billion in high risk assets as of the end of September 1987, compared to $6.4 billion at year-end 1984. Nonaccrual loans (loans which are not expected to be fully paid) totalled $6.0 billion as of September 1987, up sharply from $1.8 billion at year-end 1984. The value of property acquired through foreclosure and other means held by all FCS institutions more than doubled from $0.5 billion at year-end 1984 to over $1 billion as of September 30, 1987.

The substantial increase in both nonaccrual loans and acquired properties is a drain on the System's resources, since lenders are forced to absorb continued operating losses or to sell properties, even if at a loss, in an already depressed farm real estate market. In addition, System lenders have charged off $2.9 billion as uncollectable loans since the beginning of 1985. This high level of loan chargeoffs, combined with a substantial amount set aside to absorb future loan losses, resulted in net operating losses for the System since the end of 1984 of $4.8 billion.

The System has also experienced a significant loss of borrowers over the past two years. Outstanding loans at System institutions dropped sharply (24% from $66.6 billion at the end of 1985 to $50.4 in September 1987), as financially strong borrowers paid off their loans and obtained credit elsewhere, and as System lenders acquired farms through foreclosure and related actions. (During the same time period total farm debt declined from $192 billion at year

end 1985 and has been estimated as about $164 currently.) There are two major reasons for this borrower flight. First, System interest rates have not declined in line with the recent drop in market rates in the economy at large. Second, there is a perception that the System's long-term financial soundness may be questionable and hence borrower stock would not be repaid at full value.

Economic forecasts from FCA, FCS, the General Accounting Office (GAO), and the Congressional Budget Office (CBO) project that the FCS will use up its remaining reserves by 1988. The Federal land banks as a group have already used up all of their remaining reserves. In eight of twelve land banks borrower stock is already impaired—meaning the book value of the stock is less than the purchased (or par) value. Although 1987 System-wide results are better than earlier forecasts, individual banks remain in serious jeopardy. Several land banks could be in a negative total capital position under generally accepted accounting principles within months.

Farm Credit System: Recent Legislation

The Farm Credit Amendments Act of 1985 (P.L. 99-205) reorganized the Farm Credit Administration with the goal of making it an arm's-length regulator of the System. It set up the current FCA Board structure and also provided the agency increased regulatory powers. On the theory that the financially stronger elements of the system would assist the elements experiencing financial stress, it created a new institution, the Farm Credit System Capital Corporation. The Capital Corporation was given the power to assess healthy System institutions for purposes of aiding weaker institutions. It also authorized Federal funds to assist the System should its self-help resources be exhausted.

This Federal assistance, however, would only be given at the discretion of the Department of Treasury if certified as needed by the Farm Credit Administration. Any Federal assistance would be subject to Congressional appropriations in advance.

The continuing deterioration in the system's financial condition, pressures to reduce the System's loan interest rates to more competitive levels, and litigation filed to block the self-help provisions adopted in 1985 all led to changes in the 1985 legislation less than one year later. In October 1986, The Farm Credit Act Amendments of 1986 (P.L. 99-509) were enacted.

The 1986 Act (1) repealed the preexisting power of the Farm Credit Administration to approve loan interest rates set by each System bank; (2) established as Congressional policy that agriculture's credit needs are best served if System lenders offer equitable and competitive rates; and (3) allowed each System institution to reduce its borrowing costs by deferring and accounting for excess debt costs and specified losses for a period of up to 20 years. These regulatory accounting practices (RAP), subject to FCA approval, were intended to enable units of the System that had no remaining surplus capital to deal with their operating losses (without necessarily threatening borrower-owned stock). This allowed FLBs with impaired borrower stock to continue paying off their stock at par value, but then booking these losses over time. Banks using RAP were thus permitted to continue to operate and were given breath-

ing space to develop a more permanent solution to their financial problems.

Farmers Home Administration: Background

The Farmers Home Administration (FmHA) is the credit agency for agriculture and rural development in the U.S. Department of Agriculture. When it began in 1935, the agency's original function was to make loans and grants to Depression-stricken families and help them regain self-sufficiency in making their living on family farms. Throughout its half-century of operation, FmHA has been concerned primarily with credit and counseling services that have supplemented resources of the private sector for building stronger family farms. This service has been performed under the successive names of the Resettlement Administration, the Farm Security Administration, and the Farmers Home Administration.

During the last two decades, Congress has created additional non-farm programs of benefit to families and communities in rural areas. These programs have helped to provide safe, modest housing; modern, sanitary water and sewer systems; essential community facilities; and job and economy-boosting business and industry in rural areas. Accordingly, FmHA's current mission statement directs FmHA to "serve as a temporary source of supervised credit and technical support for rural Americans for improving their farming enterprises, housing conditions, community facilities, and other business endeavors until they are able to qualify for private sector resources."

FmHA has extended the reach of nongovernmental lending institutions into rural sectors that lacked access to such financial resources. In most programs, the agency makes loans to qualified applicants who can find no other sources of financing available on terms or conditions they can meet.

Funds loaned by FmHA come from collections on previous loans, or from private investors through the sale of Government securities. In making guaranteed loans, funds are supplied directly to borrowers by commercial lenders, with FmHA minimizing lenders' risks.

Farmers Home Administration Farm Programs

Farm Ownership Loans

Farm ownership loans are made to borrowers who are or will be owner operators of family-size farms and who cannot obtain credit elsewhere to improve or acquire farms, refinance debts, finance non-farm enterprises, or make additions to farms. The interest rate for insured loans is determined by the Secretary of Agriculture and does not exceed the cost-of-money rate to the Government, plus up to 1 percent.

Loans to limited resources borrowers bear interest of not more than one-half of the cost-of-money rate but not less than 5 percent per year and will be increased when periodic reviews indicate a borrower is able to pay an increased rate up to the cost-of-money rate. The applicable interest rate is increased by 2 percent if the project being financed involves the use of prime farmland for non-

farm purposes. The interest rate for guaranteed loans is negotiated by the lender and borrower.

Operating Loans

Operating loans provide short-to-intermediate term production or chattel credit to farmers who are or will be the operators of family-size farms who cannot obtain credit elsewhere. Loan terms include a repayment period not to exceed 7 years but may be rescheduled for up to 15 additional years. The interest rate for insured loans is determined by the Secretary of Agriculture and does not exceed the cost-of-money rate to the Government, plus up to 1 percent.

Loans to limited resource borrowers bear interest at a rate 3 percent below the cost-of-money and will be increased when periodic reviews indicate a borrower is able to pay an increased rate of up to the cost-of-money rate. The interest rate is increased by 2 percent if the project being financed involves the use of prime farmland for non-farm purposes. The interest rate for guaranteed loans is negotiated by the lender and borrower.

Emergency Disaster Loans

Emergency disaster loans are made to farmers in counties declared as disaster areas or in contiguous counties to restore production. A farmer who cannot get credit elsewhere is eligible for an actual loss loan of up to $500,000 per disaster at an interest rate of 4.5 percent.

Farmers Home Administration: Financial Condition

As might be expected, the Farmers Home Administration farm loan portfolio is at greater risk than those of private lenders, although FmHA holds only 16 percent or $26 billion of farm debt nationally. As the "lender of last resort" to the agricultural sector, Farmers Home often holds the least favorable loans.

About 40 percent of FmHA's outstanding debt is held by borrowers with debt-to-asset ratios over 70 percent and with negative cash flows. As of the end of December 1986, nearly 70 percent of FmHA farm debt outstanding or $18 billion was deliquent. The dollar amount deliquent has risen from $820 million to $8.5 billion in 7 years. In addition, as of March 31, 1987, FmHA owned about 5,276 farm properties valued at almost $850 million. This is an almost 16-fold increase since 1979 in the number of properties held. FmHA has acquired these properties primarily through voluntary conveyance and forced liquidation.

According to data from the USDA Farm Cost and Returns Survey, the Farmers Home Administration has the highest potential losses of all lenders as of January 1, 1987. During the remainder of this decade, FmHA is likely to charge off more than twice the percentage of its commercial farm debt portfolio, compared to all other lenders combined, according to the USDA survey. This would tend to understate overall FmHA potential farm lending losses since, as lender of last resort, FmHA lends to a number of farmers with less the $40,000 in sales.

The Current Situation

The agricultural depression of the 1980's rivals that of the 1930's in terms of its impacts on farmers. While agriculture is a smaller part of the national economy now it remains the primary source of employment and income in many parts of the nation. Government payments have eased the burden on many farmers by maintaining aggregate levels of new farm income but a large number of the nation's younger and more productive farmers have been crushed by a drop of one-third or more in land values.

Farmers who either began operating in the 1970's or significantly expanded their operations in this period are most affected by the decline in land values because they have the greatest amount of debt. However, even farmers with no debt, who are close to retirement, have seen their net worth and hence their retirement savings stripped away by the collapse of farmland values.

While debt has fallen significantly in the last three years the burden has not been uniformly reduced. Many of those reducing their debt holdings were able to do so because they had relatively low levels of debt relative to their income. Most disturbing to the Committee, the other major group causing the fall in debt has been those farmers forced off their farms as a result of their inability to meet thier commitments to lenders. While roughly 40 percent of farmers have no debt some 10–12 percent of farmers holding 37 percent of the total debt are in extreme financial difficulty. As these farmers default on their payments to lenders they cause financial difficulty for the lender by reducing their net worth. For a lender such as the Farm Credit System which specializes in farm loans these nonaccrual loans can rapidly result in financial calamity.

While the troubles of the FCS have received the greatest attention in the past debate, all agricultural lenders have experienced major losses. In proportionate terms, the Farmers Home Administration has experienced the greatest share of bad loans. Given its statutory mandate as lender of last resort this is not a surprising result. Since FmHA is a direct arm of the Federal Government these losses become part of the national debt.

Life insurance companies and commercial banks have also experienced losses comparable in percentage terms to those of the FCS but the diversified nature of their total loan portfolio limits the effect of these losses on their earnings and net worth. In response to these losses virtually all life insurance companies have suspended their farm loan programs. Similarly many commercial banks are unwilling to take on new customers and farm loan losses have resulted in a significant number of bank failures among small agricultural banks. This contraction in the number of insctitutions willing to supply credit to farmers makes it even more important that the FCS remain a viable source of credit to agriculture during good times and bad.

The Farm Credit System continues to experience unprecedented levels of nonperforming loans. As of September 30, 1987, the system held $6.0 billion of nonaccrual loans (loans for which neither full principal nor interest payments are likely), another $4.7 billion of high risk loans (loans which require more than normal

servicing), and $1.0 billion of property in inventory. Making matters worse, the system's total loan volume (this includes the Bank for Cooperatives) has fallen from $81.4 billion at the end of 1983 to $50.4 billion currently. Due in part to the time-consuming task of managing nonperforming loans, the System has not been able to make a commensurate reduction in operating costs. Although significant efforts to cut costs have been made, because of the cost of carrying such large amounts of nonperforming loans, of servicing those loans, and of continuing to meet the system's debt payments to its investors, the System has been unable to offer competitive rates to its borrowers.

As a consequence, the Farm Credit System lost $2.7 billion in 1985 and $1.9 billion in 1986. Losses apparently will continue into 1987, but at a lower rate. The System's Farm Credit Corporation of America (which serves as the spokesman for the FCS) has projected future losses of $1.282 billion for 1987, $1.090 billion for 1988 and $742 million for 1989. The System's combined surplus is forecast to be $121 million in 1987, a deficit of $1.026 billion in 1988 and a deficit of $1.826 billion in 1989.

While 1987 third quarter results for the FCS show a slight aggregate profit of $4 million continuing the improvements recorded in the first two quarters of this year, these results do not indicate that the FCS will no longer need Federal assistance. For the last three quarters the individual banks in the weakest financial condition have been forced to undertake actions which while preserving their short term survival, may well weaken their long term viability. In order to preserve their access to the bond market they have liquidated assets.

FCS institutions have also benefitted from the stabilization of farmland values which allowed them to reverse funds from their allowance for loan losses. These actions provide one-time infusions of funds but the banks' ability to replicate these infusions on a continuing basis is limited. In addition the volume of performing loans is declining and while the absolute value of nonaccruals is starting to fall the proportion of bad loans in the total portfolio remains relatively constant.

The third quarter results suggest that income at the land banks is continuing to fall and that while the Federal Intermediate Credit Banks and Banks for Cooperatives are still profitable, the amount of income relative to assets is declining. Unfortunately, the use of system-wide financial data masks the difficulties of many of the individual system banks and associations. For example, the combined "surplus" of the nine weakest land banks at year-end 1987 is projected to be a negative $1.4 billion. When compared to a system-wide combined surplus of $121 million at the end of 1987, this points out the divergence in the condition of System institutions.

Results from the 1987 third quarter also highlight the variability in the financial condition of FCS institutions. The first chart shows the relative position of the major components of the FCS. It is clear that the remaining assets of the FCS are concentrated in the PCA's and that the land bank group is in severe difficulty. The second chart shows income before the provision for loan losses for the various land banks. Only five of the 12 banks in the group were profitable and their profits were far less in aggregate than the losses of

the other seven banks. Since money was taken out of the allowance for losses in most of the land banks, the level of income after provision is higher than shown here. The next chart makes clear the impact of previous losses on farmer/borrowers. In eight of the land banks the current value of the stock owned by farmers is less than the $5 par value which they paid for it. While all these banks continue to retire borrower stock at par their ability to continue to do so is limited.

The final chart highlights the short term difficulty of the FCS. The individual banks are required to have sufficient collateral, in the form of performing loans and cash, to back all of the debt they have outstanding. If they do not have sufficient collateral, the FCA will not allow them to sell any additional bonds or notes—and this lack of access to the market would effectively shut down any institution. As shown by the chart the Spokane land bank has a negative position which requires it to borrow collateral from other banks. In addition four other banks have very low collateral positions relative to their borrowing requirements. (The information set forth in the charts has been provided by the Farm Credit System and represents unaudited financial information.)

FARM CREDIT SYSTEM
ANALYSIS OF SEPTEMBER 30, 1987
FINANCIAL RESULTS AND CONDITION

FINANCIAL CONDITION

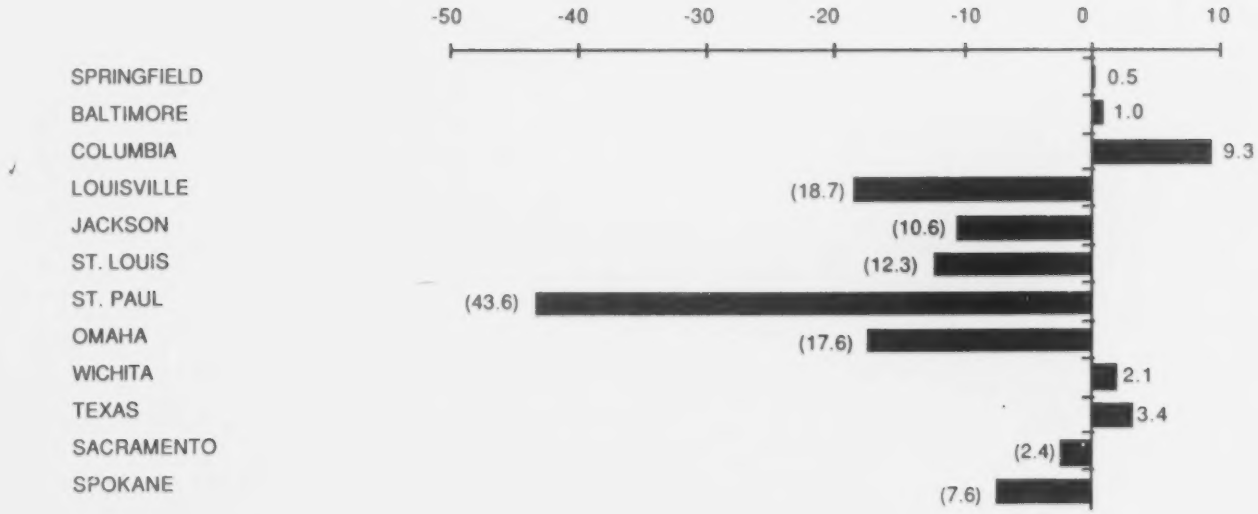
SURPLUS BY BANK AND ASSOCIATION GROUP
SEPTEMBER 30, 1987
($ Millions)

FLB	FLBA	FICB	PCA	BC	TOTAL
-$555	$180	$200	$1,099	$318	$1,216

RESULTS OF OPERATIONS

FEDERAL LAND BANKS
INCOME BEFORE PROVISION
THREE MONTHS ENDED SEPTEMBER 30, 1987

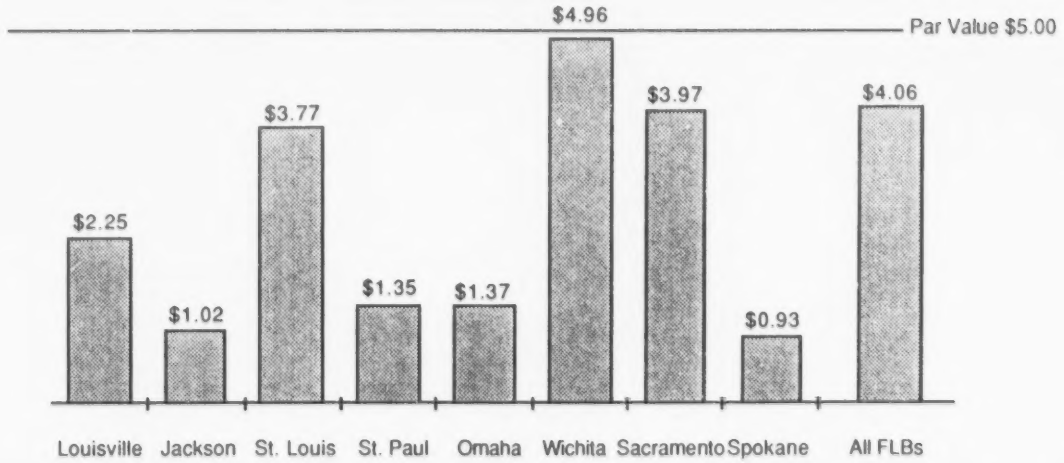
($ Millions)



FARM CREDIT SYSTEM
ANALYSIS OF SEPTEMBER 30, 1987
FINANCIAL RESULTS AND CONDITION

RESULTS OF OPERATIONS

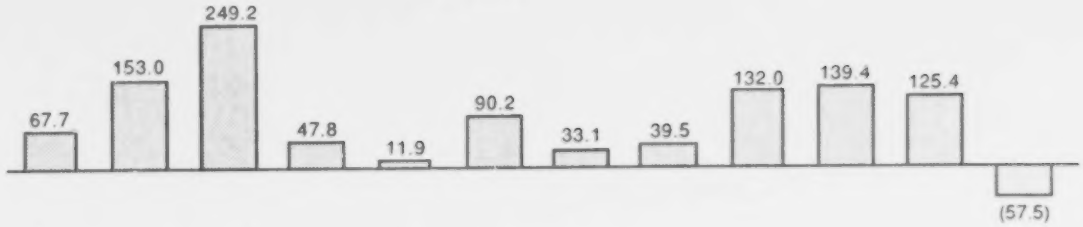
SELECTED FEDERAL LAND BANKS
GAAP NET BOOK VALUE PER SHARE
SEPTEMBER 30, 1987



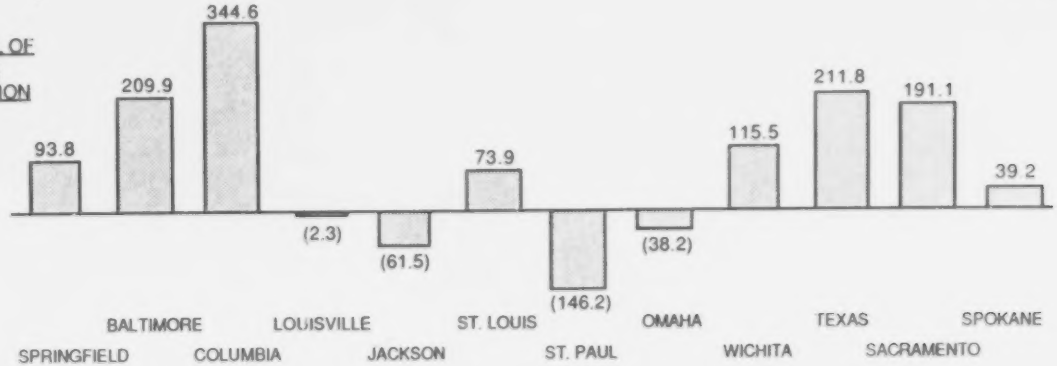
FARM CREDIT SYSTEM
ANALYSIS OF SEPTEMBER 30, 1987
FINANCIAL RESULTS AND CONDITION

FINANCIAL CONDITION

FEDERAL LAND BANKS
COLLATERAL POSITION
SEPTEMBER 30, 1987
($ Millions)



ASSUMING REVERSAL OF
THIRD QUARTER 1986
CAPITAL PRESERVATION



Purpose and Need for Legislation

The current credit system serving American agriculture has been in place since the 1930s. Over the last fifty years the structure of American agriculture has changed greatly and the credit needs of farmers in recent years have not been adequately served by the existing structure. Farmers and ranchers have faced bankruptcies and foreclosures unprecedented since the Great Depression. Commodity prices and farm land values, while stabilized at least temporarily, remain near record lows in inflation-adjusted terms.

Credit is now a vital element to most farmers. This bill, S. 1665, creates an impetus for a major reorganization of the credit delivery mechanism for American agriculture ensuring farmers improved access to credit at competitive rates. The financial turmoil of the last few years has shown that financial difficulties of farm lenders have contributed significantly to the problems of farmers.

During periods of depressed commodity prices and falling farm land values, farmers need, more than ever, access to reasonably priced credit. Yet, pressures on all farm lenders to offset losses has too often pushed up interest rates to farmers and merely accelerated their financial difficulties.

This legislation addresses all aspects of the agricultural credit situation. S. 1665 improves the ability of the Farm Credit System (FCS) to serve farmers. It also begins to make the Farmers Home Administration (FmHA) more responsive to the financial crisis in agriculture and creates a secondary market which will enhance the ability of the Farm Credit System, commercial banks, and life insurance companies to supply credit to agriculture at fixed rates, on more favorable terms, and at competitive rates.

Distressed FCS and FmHA borrowers, who often through no fault of their own, are now facing foreclosure, will be given a second chance in cases where restructuring loans is less costly than foreclosure. Ultimately, all farmer-borrowers will be aided. Federal financial assistance will help cut borrowing costs for all FCS institutions which will be passed on to farmers and ranchers in the form of lower interest rates. Both FCS and FmHA borrowers will be given expanded rights regarding their loans and farm property.

Over the past five years both farmers, and their lenders, have experienced major shocks as the agricultural boom of the 1970s collapsed. Many farmers saw their net worth decline by more than half as land values plummeted from their 1982 peak. Events outside the farmers' control, declining land values, falling machinery values and lower commodity prices all reduced farmers' net worth. In addition, a significant number of farmers experienced falling income, although aggregate farm income remained strong as a result of increased Government payments.

The fall in the value of security backing loans taken out by farmers and the drop in many farmers' ability to service their debt obligations left many lenders in a financially precarious position. The private lender most greatly affected by this decline in agriculture has been the Farm Credit System. In part this reflects the fact that it is the largest lender to American farmers but, also the fact that it is restricted to agricultural lending. Thus, both the size of its commitments to farmers and the lack of diversity in its portfolio of

loans contributed to massive losses approaching $5 billion since 1984.

It is clear now that the boom of the 1970s was not indefinitely sustainable and that many of the investment decisions made in that period are no longer viable. United States agriculture responded to higher commodity prices, cheap credit, third world hunger, new markets in the Soviet Union and China, and technological gains in the 1970's by greatly expanding production. This expansion was achieved by increasing U.S. acreage planted by more than 20 percent and raising yields per acre. The production expansion required very large capital expenditures that increased aggregate farm debt from less than $70 billion in 1972 to almost $220 billion by the early 1980's. Today, aggregate farm debt has declined to around $164 billion. Farmers have borne the brunt of this decline in the form of lower farm asset values while their lenders have faced higher loan losses and reduced income.

S. 1665 attempts to address both the short run problems facing individual farmers, ranchers, and lenders and the long run issue of assuring viable sources of credit to farmers at fair and reasonable rates. It will provide immediate assistance to turn the ailing Farm Credit System in the right direction while providing incentives to keep it on the path to recovery in the future. Banks and other lenders will be able to provide new options, such as fixed rate real estate loans, to farmers through the secondary market. This will mitigate, in the future, the problems which confronted agriculture early in this decade when farmer interest costs soared as interest rates rose and contributed significantly to the drop in land values.

All elements of agricultural credit, have experienced severe financial difficulties caused in large part by changes in macroeconomic conditions outside the financial instututions' control. Attempts in 1985 and 1986 to remedy this situation have not been successful. It is therefore essential that legislation which addresses comprehensively the financial condition of all elements of the agricultural lending system be enacted.

Title I—The Assistance Package

The FCS self-help program envisioned in the 1985 legislation has been less than successful. And without the fullest use on those 1985 authorities, there is little hope the 1986 legislation providing for the use of regulatory accounting principles can do little more than buy time.

S. 1665 accepts the inevitability of Federal financial assistance to the Farm Credit System. This bill streamlines the procedure for accomplishing this objective, provides for meaningful assistance to farmers and ranchers, and limits the amount of taxpayer dollars at risk.

First, the bill would remove the requirement imposed in the 1985 amendments that the Farm Credit Administration certify to the Department of the Treasury that the System needs outside assistance. S. 1665 would also replace the current Capital Corporation with a new entity, the Farm Credit System Assistance Board. The Assistance Board has a limited life and is established as a supervisory entity for the FCS with the authority to prescribe particular

types of behavior for financially troubled FCS institutions. Before an ailing bank can receive financial assistance the Assistance Board must be satisfied with the bank's plan for future operations and that it is cheaper to assist the bank than to liquidate the institution.

The Assistance Board is made up of 5 people: the Secretary of Agriculture, the Secretary of the Treasury, the Chairman of the Federal Reserve Board, and two appointees. The three Federal officials can delegate their responsibility to a member of their staff, and the Committee intends that the Assistance Board will begin functioning once the three federal members are designated. The Committee believes that an external supervisory board is necessary to ensure that Federal assistance is used in a manner consistent with the intent of the legislation. At the same time the System should be encouraged to return to strictly private status with the FCA acting as a true arms-length regulator once the current financial difficulties have been resolved. While the Assistance Board has authority to approve business plans of system entities, it is not empowered to actually implement these plans.

A System bank or association is eligible to apply for assistance at the time the book value of its stock falls below par value. The Assistance board is required to make a determination of whether to allow the institution to issue preferred stock, and thereby receive assistance, prior to the point at which the value of the borrowers' stock reaches 75 percent of par. In any case, if the borrower stock of an institution is impaired to 75 percent of par, and the institution has requested assistance and is willing to comply with all terms and conditions set forth by the Board, the Board must certify the institution to issue preferred stock sufficient to maintain the value of borrower stock at least 75 percent of par. However, liquidation is less costly than providing assistance to the institution. They may request that the FCA either liquidate the institution, or require a merger subject to stockholder approval.

The Assistance Board has a number of special powers regarding institutions receiving assistance under this title. These powers include requiring approval of the hiring policies and salary scales of the institution. Also, the Board has the authority to disapprove changes in management and decisions regarding continued employment or promotion of institution officials. In addition, they have authority to: "take such other action as the Assistance Board determines may be necessary . . ." The Committee intends that these authorities include the authority to remove management if that is necessary to return the institution to a sound financial condition.

The Assistant Board provides assistance by authorizing the bank to issue a specific amount of preferred stock and by approving the uses of the proceeds from the sale of this stock. Among the appropriate uses for the proceeds are: the repayment of borrower stock at par, offsetting the interest expense on certain high cost bonds issued by System banks, offsetting the premiums paid to retire high interest debt obligations, covering losses associated with restructuring or foreclosing nonaccrual loans, as well as facilitating mergers.

The Farm Credit Administration is given interim authority to carry-out the duties of the Assistance Board. It is the intent of the

Committee that the Assistance Board be chartered and that it become operational 15 days after the enactment of the bill. Until that time, and for not more than 30 days thereafter, if the Assistance Board members so request, the FCA should act to carry-out the provisions of the bill to provide assistance to the FCS institutions which require immediate action.

The Committee intends that commitments made under the Federal Land Bank Capital Preservation and the 37 Bank Capital Preservation Agreement (referred to as the voluntary loss sharing agreements) be carried through.

In place of direct appropriations funneled through the Capital Corporation (as provided for in the 1985 Amendments) as a means of providing assistance to FCS institutions, a mechanism is created to allow a new FCS institution, the Financial Assistance Corporation (FAC) to raise funds to assist troubled FCS institutions. The FAC will establish a Farm Credit Assistance Fund (Assistance Fund) which will be available to the Financial Assistance Corporation to carry-out the purpose of the bill.

The FAC will also establish an account called the Financial Assistance Corporation Trust Fund (Trust Fund). The Trust Fund will consist of securities of the U.S. Treasury purchased by the FAC with funds received from purchase of stock in the FAC by other System institutions.

There will be a one-time mandatory purchase of FAC stock by FCS banks and associations in order to capitalize the Trust Fund. Each FCS institution shall purchase FAC stock in an amount equal to the amount by which its unallocated retained earnings exceeds 5% of assets in the case of banks and exceeds 13% of assets for Federal Land Bank Associations or Production Credit Assocations on the basis of the financial statement of the System institutions on December 31, 1986.

The one-time stock purchase will take place within 60 days after the enactment of this bill. It will provide in excess of $200 million to serve as the initial protection to the taxpayers from defaults on FAC-issued bonds. In the case of any institution which was formed by way of a merger or consolidation that took effect on or after 12/31/86, it is the intent of the Committee that the payment owed by that institution be based on the financial statements of the preceding institutions viewed on a combined basis as of 12/31/86, including their combined assets and unallocated retained earnings as of that date.

As an offset to the new stock purchase requirements, assessments previously imposed on banks and associations to purchase stock in the Capital Corporation, created under the 1985 amendments to the Farm Credit Act, will be returned to the stockholders.

A feature of the bill which emphasizes System self-help in return for federal assistance is the provision that ratifies the accruals due for the third quarter of 1986 under the System Federal Land Bank Capital Preservation Agreement and the 37-Bank Capital Preservation Agreement. Based on 1986 year end financial reports of System banks, contributing banks under these agreements are obligated to receiving banks for approximately $415 million of capital sharing assistance. Unfortunately, the provisions of these agreements relating to these accruals have become embroiled in litiga-

tion. By including this provision in the bill, it is the Committee's intent that any questions concerning the validity of these accruals be set aside once-and-for-all and without need for any further litigation. Although desiring to settle the question of the validity of the accruals, the Committee does not intend to change the terms of the agreements relative to the time of payment of the accrued amounts and relative to the circumstances that must be present in a receiving institution to entitle it to receive a payment from a contributing bank.

Beginning 61 days after the enactment of the bill, the FAC may issue, subject to approval of the Assistance Board, securities guaranteed as to the timely payment of principal and interest by the Secretary of the Treasury in an aggregate amount up to $2.8 billion, and beginning January 1, 1989 an additional amount up to $1.2 billion, if a report by the Assistance Board is sent to Congress within a specified time period stating the need for the additional funds.

With the money raised by the sale of these bonds the FAC is authorized to purchase non-dividend bearing preferred stock from any System institution certified to issue it. Authority to certify an institution to issue this stock rests with the Assistance Board.

The Federal government will pay all the interest on these bonds for the first five years after the bonds have been issued, and one-half of the interest in the subsequent five years. The FCS is responsible for paying at least half of the interest during the second five years and all the interest in the last five years until the bonds mature. If the Treasury is required to provide more than $2 billion in assistance during this period, the System, under regulations issued by FCA, will repay any interest paid by the Treasury in excess of the $2 billion.

The principal on the bonds issued by the FAC is to be repaid by each institution that issued preferred stock in an amount equal to the par value of the preferred stock outstanding. If an institution has insufficient funds to pay off the bonds out of retained earnings, the institution is authorized to issue uncollateralized bonds in an amount sufficient to retire its FAC bonds.

To allow the FCA, until such time as the Assistance Board is operational, to provide immediate financial assistance to qualified Farm Credit System institutions, the FCA is authorized to use the Farm Credit System Revolving Fund established under section 4.0 of the Farm Credit Act. In addition, the Assistance Board is also authorized to use the revolving fund if timely assistance is required before bonds can be sold. It is the intent of the Committee that any funds used from the revolving fund be repaid in the same fiscal year through the issuance of bonds by the FAC in order to insure that the Federal budget deficit is not increased as a result of the use of the revolving fund.

In addition to providing assistance to the FCS, Title I is designed to aid farmers and ranchers, and System institutions, by requiring loan restructuring in certain circumstances. The precipitous decline of farmland values in many areas of the country resulted in a situation where the lender's normal remedy of foreclosure proved to be ineffective in minimizing losses. In many cases the value of a borrower's outstanding debt was in excess of the security underpin-

ning the loan. Many of these borrowers, although unable to meet the full amount of their legal obligation to the lender, were able to make partial payments leaving the lender with greater income than if foreclosure had been pursued.

In these and other instances it is in the best interest of the lender, the borrower, and society to restructure the loan rather than foreclose. Unfortunately, many FCS institutions were unable to recognize this and continued to foreclose even when it resulted in larger losses. In addition many FCS institutions failed to act in a timely manner when a loan ceased to be performing thereby costing both the farmer and the FCS additional money.

As a result, S. 1665 provides a mechanism to insure that all FCS borrowers whose loans are in a nonaccrual status are given the opportunity to have their loans restructured, where possible, in a timely manner. It is the Committee's belief that timely decision making will leave borrowers better off, since even when foreclosure results, the farmer is more likely to retain a residual claim on the farm assets.

Loan restructuring as envisioned in S. 1665 could include rescheduling, reamortization, renewal, deferral of principal, or interest concessions, or other action regarding an outstanding loan that would make it probable that the borrower's operation would become financially viable. The purpose of this required restructuring is to keep as many existing farmers in business as possible so long as it can be accomplished at less cost than foreclosing the loan.

Restructuring, when done in appropriate cases, can have positive results for both borrowers and lenders. The borrower remains on the farm in a viable operation and avoids the agony of losing the way of life enjoyed by the farm family. The institution, while it may take a financial loss, will lose no less than if it had foreclosed the loan. Under these circumstances, the lender would likely acquire property that would be a financial drain, disrupt the lives of the borrower and the borrower's family, and add to tensions in the rural community.

The St. Paul Farm Credit District was the first district to implement a viable plan to restructure meaningful amounts of farm debt. This plan was initially criticized by other portions of the FCS but appears to have reduced the losses which the district would otherwise have borne.

On February 27, 1987 Larry D. Buegler, President and Chief Executive Officer of the St. Paul Farm Credit Banks, described their new restructuring intiative this way:

> In the first 60 days we were able to sign preliminary agreements with more than 60 percent of our 8,400 nonaccrual borrowers to restructure their loans. To date, we have final settlements on 4,066 loans totaling $518 million settlements on 4,066 loans totaling $518 million net of charge-offs. Through restructuring we were able to settle these loans at $556 million and return that amount back to an earning status with a potential $47 million recovery of previous charge-offs and allowances on these loans. A breakdown of final results is as follows:
>
> 41 percent of the final settlements, totaling $225 million, were restructured for viability;

21 percent, or $116 million, were restructured and are considered work-out loans. Borrowers have agreed to make major changes in their farm operations via debt reduction and partial or full liquidation over the next two to five years, on a voluntary basis.

This $341 million of restructuring represents 2,047 loans. We received $47 million of additional cash or other collateral, a guaranteed source of prepayment of 863 loans and obtained shared appreciation mortgages or debt set aside agreements on 749 loans.

20 percent or $110 million, were settled for cash by the farmer.

15 percent, or $84 million, was realized by property being deeded back to FCS to reduce the operator's debt load.

3 percent, or 195 loans totaling $22 million, can only be settled by litigation.

The restructuring effort has permitted us to reach a settlement agreement with 45 percent of the borrowers who were in litigation, i.e., bankruptcy or foreclosure.

In conclusion, by restructuring we have generated a positive image in the agricultural and political communities. We have increased borrower motivation to pay, bought additional time and have evidence that Chapter 12 bankrupcty filings are significantly lower in our four states than in neighboring states. At the same time, these agreements have significantly reduced the risk exposure of the Farm Credit System in the Seventh District through upfront cash, additional collateral and/or secured sources of payment.

It is important to note that not all of the restructured loans will perform according to their restructured agreements and we realize that some of our problems have been deferred out to future years. But we feel strongly that some income is better than no income on these loans. In all instances we have inserted language in our agreements that enable us to restore the full amount of debt prior to the restructuring if there is a default.

To insure that all borrowers are provided with the opportunity to have their loans restructured, every district is required to establish a policy for restructuring loans which examines the total cost of foreclosure and relates it to the cost of restructuring the loan to the point that the farm operation is likely to be viable in the future. Where it is less costly to restructure, the loan shall be restructured. Every borrower shall be provided with access to the institution's policy on restructuring.

Under this title, each District in which an institution receives permission by the Assistance Board to sell preferred stock shall establish a district-wide Special Assets Group (SAG) to administer its restructuring policy. The SAG may work directly with the local associations in developing the restructuring plans for the non-accrual loans. The St. Paul District set up a special restructuring team similar to the SAG to oversee the District's restructuring plan. This team also provides assistance to local associations in their re-

structuring efforts. The Committee intends that the SAG will insure that there is uniformity in restructuring throughout the District.

In addition, a sample of the loans brought before each SAG and turned down for restructuring will be reviewed by a National Special Assets Council (NSAC), an entity reporting to the Assistance Board. NSAC will have the right to overrule decisions by the SAG and require that a loan be restructured. It is the intent of the Committee that the NSAC review a sufficient number of the loans scheduled for foreclosure to be assured that the approved restructuring policy is being carried out at the local and district level. The Committee assumes that a reveiw of at least ten percent of those decisions would be adequate for that purpose except under unusual circumstances.

By requiring a double check of the loans designated for foreclosure, the mind set of the local loan officer should be significantly altered. In the past, a loan officer typically would have both the loan committee and supervisers review the decision to stay with a borrower and restructure the loan. This often makes it easier to foreclose on a loan rather than to restructure. Under this title, the decision to foreclose will require more steps since it will be reviewed at least once by the district SAG to see if the approved restructuring policy has been applied to the loan and there may be further review by the NSAC.

None of the restructuring provisions preclude the rights of a borrower to appeal once the loan has been placed in foreclosure status; rather the intent is to ensure that foreclosure actions are undertaken only when it is clear that it is in the lender's best interest to foreclose.

It is the intent of the Committee that the FCA, by regulation, define as an unsafe and unsound practice any noncompliance by a System institution with the terms and conditions of assistance imposed by the Assistance Board in consultation with the FCA. The FCA will then be authorized to utilize any powers or authorities that it has to rectify an unsafe and unsound practice.

It is the intent of the Committee that those institutions which are temporarily impairing stock, but have the wherewithal to work out their problems, need not receive federal assistance. To accomplish this S. 1665 directs FCA to establish regulations to allow such institutions to use Regulatory Accounting Principals (RAP) through a period ending December 31, 1992.

Title I is designed to financially assist the System so that is can fulfill its role in providing credit to farmers, ranchers and farm cooperatives at competitive rates. Title II, on the other hand, is designed to change the System so that it can better protect itself against future recessions in the farm economy.

Title II—Restructuring the Farm Credit System

Title II creates a System-founded insurance pool to backstop System securities. This pool, the Farm Credit System Central Reserve Account (Central Reserve) is patterned somewhat after the Federal Deposit Insurance Corporation, and provides additional as-

surance of the timely redemption of System securities held by investors.

Since 1971, the System has used the unique and somewhat unwieldy device of "joint and several liability" to enhance the marketability and security of its bonds. Under this scheme, each of the 37 banks of the System are legally bound to stand behind each of the System-wide bonds. If at any time one of the banks should become unable to redeem its share of a maturing bond, either through cash reserves or by rolling over debt, banks organized under the same Title of the Act would first be required to make up the deficiency. If they were also unable, other System banks would be required to provide funds to retire the bonds. This arrangement has never actually been invoked. However, it has certainly been the impetus in the last several years for a series of complicated capital preservation agreements under which hundreds of millions of dollars have passed from healthy banks to distressed banks.

The creation of the Central Reserve by this bill in 1992 allows more expeditious action in dealing with problem institutions and would minimize the need for case-by-case assistance under contractual arrangements in the future. The underlying "joint and several liability" of System institutions, is preserved as the fundamental assurance to investors that they will be repaid.

The Central Reserve is to be part of the FCA and is to be funded by assessments on the performing and nonaccrual loans of each system bank. Performing loans will require payments of up to .15 percent of the annual average principal outstanding of the previous year while a rate of .25 percent will be assessed for nonaccrual loans. The average balance over the year is used rather than the balance on a specific date in order to account for seasonal fluctuations in the volume of performing and nonaccrual loans. Higher rates are charged on nonaccrual loans since they represent a greater risk of future charges against the reserve account.

While the FCA administers the Central Reserve the Chairman of the Board of the FCA cannot be the Chairman of the Board of the Central Reserve. Given the close nature of the relationship between the regulatory responsibility of the FCA and any need to make use of the funds of the Central Reserve the Committee decided to have the same parties involved in the decision-making.

The Central Reserve can be used to insure that borrower stock existing at the time of enactment of this bill, or issued prior to the development of new capitalization plans under this bill, can be retired at par.

Title II also provides for mergers of System institutions, or the transfer of powers or authorities. Over the past three years the structure of the FCS has undergone considerable change. In response to financial difficulties at the association and bank levels there have been many mergers of associations in many districts. In some districts there is now little difference in size between the land bank and the land bank association and similarly between the intermediate credit bank and the production credit association. One obvious question that can be asked as a result of these mergers is whether both banks and associations are needed or whether one or the other is redundant. A related question is whether the extent of the mergers is consistent with member control of the FCS. Both of

these issues are important in determining the future direction of the Farm Credit System.

The language in this title dealing with merger issues recognizes that there will need to be further changes in the structure of the FCS over the next few years as it adapts to changing conditions in agricultural credit markets. It is the committee's belief that the nature of these required changes can best be determined over time and that a set of rules which allow the system to alter its organizational form over time, subject to informed member consent and the approval of the FCA, is the best way to approach this issue.

In the bill the various components of the FCS are given expanded ability to merge and adopt a common lending structure. Where unlike entities merge a decision is required on the lending structure to be employed. Following the merger the newly merged entity acquires the powers of the previous entities. While the Committee believes that additional mergers are likely required if the FCS is to remain a viable lender, there may be instances where dissolution of currently existing entities may be appropriate. In all cases a majority of the stockholders who vote must approve the action to merge or dissolve and provision is made for reconsideration of the merger vote.

The merger language adopted by the Committee provides the System with the flexibility necessary to adapt to changing conditions while preserving the principle of borrower control of the System.

Provisions of this Title also allow FCA to expand an existing association's territory or to charter a new association where an association is liquidated. Clearly the intent of the Farm Credit Act, and of the Committee, is to insure that eligible borrowers, no matter where they reside will have the opportunity to borrow from FCS institutions. While FCA does have the authority to expand the territory of an institution, or charter a new institution, the Committee's intent is that the least costly alternative be chosen. Furthermore, when the FCA decides to expand the territory of an existing association, it is the Committee's intent that FCA give due consideration to the cost to the existing borrowers of that association of such expansion. It is the Committee's intent that an association whose territory has been expanded must retain the authority to determine how best to serve borrowers in that new area in order to minimize the costs associated with such service. It is also the intent of the Committee that the stockholders of districts and local associations maintain control over the service areas of their institutions. Thus, FCA should not impose any extension of a service area on any district or association without the approval of that district or association.

Under current law, the FCA Chairman has the authority to require one or more banks of the Farm Credit System, operating under the same title, to merge if the Chairman determines that one of such banks has failed to meet its outstanding obligations. This can only be done after consultations with the respective boards of directors.

This Title provides that such a required merger must be approved by the FCA Board after consultation with the respective boards. Both like and unlike System institutions can be merged

under the permissive authority in this title for mergers of institutions.

The intent of this section on required mergers is not to impose costs on financially healthy institutions with costs that could make the resulting institution financially non-viable. It is anticipated that the new Assistance Board will first step in and use the authorities granted to it in Title I to improve the condition of the failing institution. Where FCA requires two or more System banks to merge, it is the intent of the Committee that the capital strength of the resulting institution shall not be weakened as a result of the merger unless agreed to by the Board of Directors of those stronger banks.

One of the most important features of Title II is section 204 dealing with the guarantee of borrower stock. This section will ensure farmer-borrowers who hold stock with respect to existing loans—and farmer-borrowers who purchase stock during that period from the date of enactment until new capitalization bylaws are approved (or 9 months after enactment, whichever is sooner)—that their investment in the System will be preserved. Title II is intended to help the System retain its borrowers by protecting the value of their investments. This protection, coupled with the other improvements made by S. 1665, will help attract new borrowers to the System.

Specifically, section 204 requires that the outstanding stock held by farmer-borrowers, and the stock purchased until the new capitalization bylaws are in place or within 9 months after date of enactment of this bill, will be retired at par value when the loans are repaid in full. This guarantee of full repayment is intended to apply to banks and associations that are placed in liquidation after enactment as well as those which will continue to exist but require assistance to repay impaired stock.

The new section is applicable to "stock, participation certificates, or similar equities." These terms mean voting and nonvoting stock (inluding preferred stock), equivalent contributions to a guaranty fund, participation certificates, allocated equities, and other forms and types of equities that are issued under the 1971 Act by an institution of the System and held by persons other than such an institution. "Par value" also means face or equivalent value in the case of stock and face or equivalent in the case of participation certificates and other equities and interests. However, in the case of equities or interests that are subject to retirement under a revolving cycle where a System institution elects to retire out of order for application against a loan in default or otherwise as provided in the Act, the Committee intends that par or face value means par or face value discounted, at a rate to be determined by the institution, to reflect its present value as of the date of retirement.

S. 1665 provides that if a System institution is unable to retire any of the borrower stock at par or face value, as required, it must apply to the Assistance Board for certification to issue preferred stock to the Financial Assistance Corporation to obtain the necessary funds. The Assistance Board will be required to certify the issuance of the preferred stock in an amount sufficient to assure the redemption of the borrower stock.

The Assistance Board will assure that the borrower-stock guarantee is fulfilled during the period of time the Board is in operation—from the date it is chartered until December 31, 1992. After that period of time, the Farm Credit System Central Reserve Account will provide that assurance.

The Committee recognizes that the mechanism put in place for guaranteeing the retirement of outstanding stock at par value cannot without further provisions be applied to an association liquidated prior to enactment. Therefore, the Committee has included language requiring the Assistance Board to develop and implement procedures under which the Financial Assistance Corporation would be directed to provide the necessary funds to stockholders or receivers of an institution to carry out the stock guarantee for stock that was frozen, or retired at less than par value by an association after January 1, 1983. The Committee expects and intends that this guarantee be carried out promptly and effectively.

Protecting borrower stock, participation certificates and similar equities in these times of economic stress for many of the Nation's farmers can be of great value to the farmers and to the Farm Credit System in furthering its basic purpose of supplying credit at reasonable and competitive rates.

It is the intent of the Committee that, with respect to the guarantee of stock and participation certificates in section 204 of this Title, "fully repaid" shall include cases in which a borrower has repaid the entire amount due on a loan less the amount represented by the par value of the stock or certificates issued in connection with the loan. This is consistent with current stock retirement practices.

This title includes a provision authorizing the Banks for Cooperatives to provide financing to legal entities—including subsidiaries, partnerships, joint ventures, and similar enterprises—in which more than 50 percent of the voting control is held by one or more entities that are now eligible to borrow from the Banks for Cooperatives. The bill limits the availability of such financing to entities in which the value of business transacted with, or for members of, the parent organization or with the parent itself, exceeds the value of business transacted with nonmembers.

This provision of the bill is designed to facilitate the efforts of eligible borrowers to engage in partership and subsidiary operations with entities in which some investment is made by businesses not eligible for the services provided by the Banks for Cooperatives. The Committee believes such efforts have merit in that they are designed to strengthen the financial condition of the Banks for Cooperatives' borrowers and diversify their operations.

However, the Committee has chosen to limit the scope of the expanded lending authority of the Banks for Cooperatives. It requires the subsidiary, partnership, or similar entity that has "outside" investors to transact a majority of its business with, or for, the parent organization (or with members of the parent organization) which is eligible to borrow from the Banks for Cooperatives. It also requires that the parent have a majority ownership interest in the subsidiary. Under these conditions, since the parent is already subject to the "member business" requirement, there is assurance that

Banks for Cooperative financing will remain within well-established bounds.

The Committee understands that the Banks for Cooperatives, with the approval of the Farm Credit Administration, have provided credit to certain wholly-owned subsidiaries that would not meet the tests described above. In such cases, the eligibility tests have been applied to the combined overall business operation of both the wholly-owned subsidiary and its parent organization.

The eligibility standards included in this provision are intended to apply to only those operations that include "outside investments." The Committee does not intend to set a new standard of eligibility for wholly-owned subsidiaries of eligible borrowers.

Title III—Capitalization

Title III permits System institutions to modify their capital structure as long as certain minimum requirements, including capital adequacy requirements, are met. Thus, this title changes current law by providing Farm Credit System institutions with wide latitude to adopt capitalization programs under standards and regulations established by the Farm Credit Administration. The Committee intends that any capital adequacy standards established by CFA shall be based on generally accepted accounting principles and that such standards shall be phased in over a five-year period.

The Committee contemplates that a System institution may, among other approaches, fashion varying stock requirements for different types or classes of loans and for individual loans within types or classes. Institutions could also rely more on loan origination fees to raise capital.

The FCA, in developing standards, should take into account relative risk factors for institutions. The banks and associations, in developing their own capitalization programs, would give consideration to relevant factors such as differing risks associated with types of loans (or a loan), as well as compliance with FCA capital adequacy standards. In this regard, the provisions of the bill would change current law which has specific capitalization requirements.

This title permits the formation of at-risk capital and emphasizes capitalization of the institution, rather than of the loan. By authorizing loan origination fees for the explicit purpose of capitalization, the title also permits the creation of new more permanent capital instead of, or in addition to, stock capital which is retired when the loan is repaid.

The Committee believes that requiring some "at-risk" voting stock will foster a sense of ownership in the System and will encourage greater participation in System affairs. Thus, the title requires each FCS borrower to have voting stock (or participation certificates) equal to $1,000 or 2% of the amount of the loan, whichever is less.

Title IV—Borrowers' Rights

Title IV provides important protections for Farm Credit System borrowers. Most critical are the new provisions which require each farm credit district to develop a policy for the restructuring of distressed loans to "family farmers". These new restructuring policies

must include an explanation of the procedure for submitting an application for restructuring and the right of borrowers who are family farmers to have an administrative review of an adverse restructuring decision.

The right to appear in person, however, does not mean that a borrower must appear before any adverse action can be taken. The borrower simply has to be accorded a reasonable opportunity to appear, and should be advised of the consequences of not appearing. These restructuring procedures must be posted in all loan offices and provided to loan applicants who are family farmers.

This title also requires FCS banks and associations to provide written notice to family farmers of the action on their restructuring application. Also, each System bank and association must provide 14 days advance notice before accelerating a loan or commencing foreclosure proceedings on a distressed loan of a family farmer. The Committee believes that this approach will avoid needless foreclosure efforts, keep families on the farm and produce income for banks and associations in excess of what they would have received through foreclosure.

Family farmers are defined as those individuals engaged in farming operations whose aggregate debts do not exceed $1.5 million, 80 percent of which is from farm operations, and whose income is mostly from farming.

For distressed loans, if the bank or association determines that the potential cost of restructuring is less than the cost of foreclosure then the loan must be restructured. It is the intent of the Committee that the restructuring standards and the associated computation of restructuring and foreclosure costs be read together as general eligibility criteria for borrowers seeking to have their distressed loans restructured. Once a borrower is determined eligible, the bank or association shall calculate whether the cost of foreclosure equals or exceeds the loss from restructuring the loan. If less, the loan shall be restructured using options that maximize return to the bank or association while enabling the borrower to repay the loan, maintain the operation, and provide for reasonable family living expenses. Requiring restructuring under these circumstances should generate income for these banks and associations by converting nonperforming, or poorly performing, loans into income producing assets. The Committee felt that applying the restructuring principles used successfully by the St. Paul district should benefit both family farmers and Farm Credit System institutions.

FCS borrowers that do not have the resources to avoid foreclosure (as determined by the System institution) are eligible to assert a right of first refusal to purchase or lease land which they previously owned which was foreclosed on by the institution. These previous owners must be notified by certified mail of the right of first refusal, within 15 days of when the System elects to sell acquired property.

The bill gives various rights to borrowers or expands existing rights in a number of areas. Certain provisions give prior owners rights of first refusal to purchase or lease land acquired by FCS institutions, give certain FmHA borrowers and other persons rights in connection with the disposition or leasing of persons rights in

connection with the disposition or leasing of farmland held in inventory, and afford homestead protections to FmHA borrowers. The rights conferred under those provisions are in addition to, and are not intended to preempt, similar rights which may be afforded to those persons under State law.

The title establishes a system for notifying previous owners of the opportunity to purchase that real estate so that, whether the sale is by auction, contract or otherwise the previous owner will have an opportunity to buy-back or lease-back the property.

These rights of first refusal provisions are not, in any manner, intended to impair or encumber the marketability of such land—thus they should not be read to mean that clear title could ever be impaired or clouded by non-compliance with those provisions. In order to avoid potential impairment of the title II land, section 404(g) states that the requirements for notifying former borrowers of their rights of first refusal under this section will be fully satisfied so long as one certified mail notice is sent to the last known address of the borrower. Of course, failure of System institutions to comply with these requirements could result in liability to the previous owner, but will not cloud the title to that land. In this case the land sale would stand but the bank or association might have to pay damages to the previous owner unless the law had been followed. Such right is non-transferable and limited solely to family farmers indebted to such System institution at the time of foreclosure or voluntary conveyance.

FCS is required to notify the former owner that it intends to sell or lease the property. It is the intent of the Committee that the former owner be given one opportunity to lease back or buy back his property. Therefore, in the event an expected sale to a third party does not occur, the Committee does not intend that the former owner would be notified again of the sale unless FCS plans to accept from a third party an offer less than that submitted originally by the former owner. In that case the former owner would have the option of meeting the third party's offer.

While S. 1665 removes the reference in current law limiting sales of large tracts of land, the Committee does not favor the sale of large tracts of acquired farmland. The Committee favors sales in smaller tracts so that family farmers will have an opportunity to acquire additional land.

A System institution may offer to provide financing to a subsequent purchaser of such acquired real estate. However, a System institution is not required to offer such financing opportunity to the previous owner and such decision on its part is not to be interpreted as noncompliance with the provisions of this section. The decision, including the terms and conditions thereof, to sell or lease is solely that of the System institution.

Title V—State Mediation Program

The Committee feels that there can be substantial savings in both human and economic resources by providing loan mediation services both to agricultural lenders and borrowers. Several states have reported excellent results regarding their own mediation pro-

grams in resolving loan disputes to the satisfaction of borrowers and lenders.

Mediation, under S. 1665, stated in its simplest form means the use of a third person to facilitate negotiation among a debtor and his/her creditors. This mediation does *not* bind the parties to finding resolution of their conflict, nor is the mediator able to require specific actions.

This form of mediation can be both cost-effective and time-saving because it may avoid litigation, costly legal fees, and the lengthy processes of bankruptcy or foreclosure. Mediation increases the likelihood of voluntary settlements, as demonstrated by the success rates in existing State programs. Legal processes tend to be adversarial and mediation offers a less formal structure where each situation is considered on its own merits.

The Committee believes it would be beneficial to have more States sponsor mediation programs. S. 1665 provides for a Federal match of State mediation program operational and administrative expenses. Those States adopting mediation programs consistent with the bill will be eligible for a Federal match of up to $750,000 per year.

The up-to-50 percent Federal matching grant is available for 4 years from the date of enactment. S. 1665 authorizes to be appropriated a total of $7.5 million per year.

If mediation is to be beneficial, mediators must be properly trained. The Committee has found that proper training of mediators is a key function of a mediation program. Proper training of mediators ensure the effectiveness, neutrality, and confidentiality of the process. Also, financial and legal assistance should be available to borrowers to assist in their preparation for mediation.

This title requires, at a minimum, that only one mediation meeting need take place before the foreclosure process begins. However, if all parties agree there can be as many negotiations as are necessary to work out the issues—if negotiations break down at any stage after that one meeting then the creditors will be able to pursue appropriate remedies.

The timeliness of the mediation process is essential. It is the intent of the Committee that mediation should in no way be construed to place a moratorium on a lender's ability to pursue debt collection. Nor does the Committee intend the State mediation process be misused to delay unreasonably or unnecessarily foreclosure efforts.

Also, either the borrower or the creditor can request mediation. In Iowa, which has a state-wide mediation program, almost 50 percent of the requests for mediation came from Farm Credit System institutions.

The Committee believes that these state administered mediation programs will benefit both borrowers and creditors. However, the Committee requests that the Secretary of Agriculture review these programs after two years and report to Congress on how effective they have been by providing specific factual information on a number of issues: how many requests for mediation were filed in participating states; how often did the mediation work; when mediation failed, why did it fail; were creditors responsive to the program in particular states; and how much did mediation cost. The

Committee is very interested in detailed information on these programs and on how effectively the Federal money was used.

To ensure that meaningful mediation takes place, this title requires that USDA agencies and FCS institutions participate in the mediation process. The Committee desires that FmHA and FCS begin immediately to participate in mediations in States where those programs now exist. The Committee further directs the Secretary of Agriculture and FCA to prescribe rules for FmHA and FCS, respectively, for the agencies to take part in the mediation process.

Title VI—Farmers Home Administration

This title makes several important changes in the operations and policies of the Farmers Home Administration (FmHA). This analysis is divided into several topics.

Payment of Losses on Guaranteed Loans.—The Committee intends that the Secretary make prompt payments on losses on loans guaranteed by the Secretary in order to encourage the participation of a broad spectrum of lenders in the guaranteed loan program. The Committee also intends that the Secretary apply the restructuring concepts embodied in section 353 of the Consolidated Farm and Rural Development Act (Con Act), to guaranteed loans.

The Secretary should promulgate regulations which will allow, but do not require, a lender of loan which is guaranteed under this title to write-down principal and accrued interest on such loan if doing so would allow a greater net recovery to the government than forced liquidation or foreclosure. Such write-down of principal and accrued interest shall be initiated only by the lender. The Secretary shall make prompt payments of any losses incurred by the lender under this section. The Secretary shall provide for review of a lender's request if denied.

These changes are necessary to change FmHA's current policy of not paying guaranteed lenders for losses until all of the borrower's collateral property is liquidated. It will also encourage banks to participate in the guaranteed loan program by eliminating the fear if the farmer eventually files a bankruptcy the lender will be required to carry the loss without timely payment on the guarantee. The Committee intends that this provision will prevent unnecessary displacement of family farmers whose loans are guaranteed under the guaranteed loan program.

Notice of Loan Service Programs.—Title VI requires that FmHA borrowers receive written notice of all loan service programs available to assist financially distressed borrowers. These loan service programs concern debt restructuring, homestead protection, and farm land leaseback/buyback. The notices are required: (1) upon request of the borrower; (2) when the borrower is more than 180 days delinquent; (3) prior to the acceleration of the borrower's loan, or, if the borrower has been accelerated prior to implementation of this Act, before liquidation or foreclosure activities.

The Committee intends that the Secretary shall provide clear, concise, informative, and timely notices of the loan servicing programs of the Farmers Home Administration. In the past FmHA has generally placed the burden on the borrower to request loan

servicing. FmHA has failed to tell borrowers about such programs at a time when they could effectively make use of them. When FmHA did provide notice to borrowers, sometimes under court order, the notices were difficult to read, complicated and confusing. Most borrowers could not have been expected to respond appropriately.

In a series of opinions and orders, a United States District Court in North Dakota has ordered FmHA to provide improved notices to FmHA borrowers which explain their options and clearly inform them of their rights. These decisions include *Coleman* v. *Block*, 580 F. Supp. (D. N.D. 1984). *Coleman* v. *Lyng*, Civ. A1-83-47, Memorandum and Order (D. N.D. May 7, 1987); and *Coleman* v. *Lyng*, Civ. A1-83-47, Memorandum and Order (D. N.D. June 2, 1987). The Committee intends that the FmHA notices required by Title VI of S. 1665 be easy to read, informative, and helpful to FmHA borrowers, and that they clearly set forth servicing options in a timely and constructive manner. This title of S. 1665 is based on careful analysis of the *Coleman* opinions and is designed to address, for the future, the notice issues raised in that case.

Past FmHA delays in notifying farmers of the availability of the loan service programs have increased borrower financial problems. In many instances this has led to the need for principal and interest write-offs in order to show a positive cash flow which is a minimum requirement for certain loan servicing options.

Currently the FmHA does not initiate acceleration and foreclosure actions until the borrower is at least one year delinquent on his payments. This legislation requires the FmHA to notify the borrower of his restructuring options once his loan is 180 days delinquent. The Committee notes that farmers who are, or become, 180 days delinquent may believe that if they are able to make their payment by the end of the year that they may ignore the notice. The Committee urges farmers not to ignore the notice of loan servicing options and to apply for restructuring within the required time frame.

Administrative Appeals.—The Committee intends the appeals diversion of the Farmers Home Administration established under this title be scrupulously neutral; that hearing offices not engage in *ex parte* contacts with either FmHA employees or the borrower concerning the merits of a particular appeal.

Disposition and Leasing of Farmlands.—This section strengthens the provisions of the Food Security Act of 1985 that required FmHA to give the previous owner of inventory farm land priority to lease or purchase the property. Existing statutes set out preferences, but do not clearly define priorities. In addition, existing law does not provide for family members.

This title sets the following priorities for lease and sale of land in FmHA inventories:

1. The last previous FmHA borrower/owner of the property.
2. A spouse or child of the previous owner, if that person is actively farming. Or, a stockholder in the family farm corporation which was the previous owner of the property.
3. Operator of not larger than a family size farm.

The title provides that the previous owner and family have priority for lease and sale for the first 190 days.

The title also allows Indian tribal members, tribal corporations or Indian tribes to acquire land within reservation boundaries and to acquire land consisting of Indian allotments over which a Federally recognized Indian tribe exercises jurisdiction. If the previous owner or his family cannot lease or purchase, and the property is within the boundaries of an Indian reservation or is an Indian allotment, the individual Indians, tribal corporations and tribes, themselves, are given the opportunity to acquire the property. If the property is to be acquired by a tribe, the property must be held in trust while that tribe pays annual rents until the value of the property is paid back.

The Committee directs the Secretary of Agriculture to consult with the Secretary of the Interior regarding the modification of any delinquent loan for which an Indian borrower has pledged trust or restricted land, and has applied for restructuring. In consulting with the Secretary of the Interior, the Secretary shall specifically inquire whether any grants, loans, guarantees, or interest subsidy payments authorized by the Indian Financing Act of 1974 can be made available to the Indian borrower in order to increase the viability of the borrower's plan for restructuring.

The Committee has been advised that such utilization of Indian Financing Act authority by the Secretary of the Interior would be consistent with the purpose and intent of that Act. The Secretary is further directed to inquire of the Secretary of the Interior regarding any other assistance, support or counsel that might be provided by the Department of the Interior to ensure that the Indian borrower can continue farming or ranching and/or preserve trust title.

It is expected that thirty-nine percent (144) of the 370 Indian FmHA borrowers are at risk of losing 132,068 acres by September 1988. An additional 13,382 acres have already been lost.

A provision of this title requries FmHA to notify the previous owner of land acquired by FmHA, within 30 days of acquisition, of the right to be considered for a lease or purchase of the property. Delays beyond 30 days in issuing such notices could increase the likelihood that the previous owner could not be able to purchase or leaseback the land. FmHA currently does not have any set time during which it must notify the previous owner of the availability of the leaseback/buyback program.

FmHA now delays notice until long after the borrowers' accounts are accelerated. Thus, with their farm production income releases terminated and Agricultural Stabilization and Conservation Service (ASCS) payments reduced by offset, it is very difficult for the borrower to show eligibility for the program.

One of the requirements for approval for the leaseback program is that the borrower have a reasonable prospect of success in the farming operation if the lease is made. The longer the borrower is deprived of the farm income the less likely it is that approval of leaseback will be given.

The title also provides FmHA with authority to enter contracts for lease or sale to borrower before acquisition. It gives the Secretary the authority to enter into contracts for the lease of farm land to the borrower before the property is taken into inventory. FmHA currently will not consider a borrower's eligibility for leaseback

until after the acquisition of the borrower's property, even if the borrower were to voluntarily convey the property to FmHA to avoid foreclosure.

This title will give the Secretary the authority needed to make binding commitments to the borrower on leaseback before the borrower is required to sign over title to FmHA. This will allow borrowers to decide whether it is better to reconvey property to FmHA rather than file bankruptcy or fight a legal foreclosure action—both of which are very costly to FmHA.

Income Release.—Section 608 of Title VI requires FmHA to release its security interest in the farmer's production income and ASCS payments so that farmers can use this money to pay essential living and operating expenses. The Secretary must continue to make these releases until the farmer's accounts are accelerated.

This section specifically addresses one of the classes of plaintiffs in the *Coleman* case mentioned earlier. This class consists of around 14,000 borrowers whose FmHA accounts were accelerated but who received a notice which did not properly advise them of their rights. This title requires the Secretary to begin making income releases, upon the request of the borrower, of up to $18,000 per year, for those borrowers who are actively engaged in farming. It also requires FmHA to continue to release income until the FmHA has made a final determination on the borrower's application for debt restructuring.

These income releases will benefit rural communities as a whole by ensuring that farmers can pay their local suppliers and businesses, and local property taxes. This section will also benefit the Farm Credit System and local banks by allowing farmers whose production income is controlled by FmHA to pay on their first mortgages to the local Farm Credit System institutions.

It will allow the 14,000 borrowers whose accounts have already been accelerated by FmHA the opportunity to have their loans restructured. Eventually, with restructuring many of these borrowers will be able to continue farming. But these borrowers will not be able to keep their farms in operation, or their families fed and clothed, if their releases are terminated during the months FmHA takes to issue regulations and consider them for such restructuring.

It is the intent of Congress that the Secretary develop regulations to implement this section. Operating expenses for which income will be released include, but are not limited to, property, taxes, livestock feed, veterinary care, machinery repair, seed, fertilizer, fuel and other standard expenses for the type of farm in which the borrower is engaged. It is also intended that the regulation be applied in a uniform manner throughout the nation.

Loan Marketing.—Section 609 of Title VI enables the Farmers Home Administration (FmHA) to permit the sale of the government guaranteed portion of FmHA loans by means of a secondary market program and expands that authority to permit the sale of certificates representing an interest in a pool of such loans in a secondary market.

This section requires the continuation of FmHA's current secondary market program which exists on an *ad hoc* basis. Moreover, it

will require an upgrading and expansion of that secondary market program to allow pooling of smaller loans.

This FmHA secondary market program is modeled after the very successful secondary market program administered by the Small Business Administration (SBA). The Committee expects FmHA to develop a secondary market program as similar to SBA's as is possible.

Under this section, broker/dealers could assemble loan pools and then apply to FmHA to have a full faith and credit guarantee extended to certificates representing loan pools. It would require FmHA to develop a central registry to record all sales and resales of individual FmHA guaranteed loans and certificates in the secondary market. This could be accomplished by FmHA appointing a central registrar or a fiscal and transfer agent who would receive payment on all individual loans from the originating lenders and remit these payments to the holders. Such an agent functioning in either capacity should be entitled to a fee for performance of such services.

This section also directs FmHA to require broker/dealers who serve as market makers to have the capability of servicing all loan pool certificates sold by that market maker, should FmHA elect not to appoint a fiscal and transfer agent. Such servicing of loan pools by broker/dealers could also be accomplished by FmHA requiring the broker/dealers to use central registrar agents appointed by FmHA.

FmHA ultimately would be responsible for covering any financial shortfall associated with the timely payment of interest and principal on the pool certificates. However, the Committee anticipates that funding of the guaranteed payments could be structured so there would be no additional budgetary impact since the guarantee of the certificates is basically only a "secondary" guarantee. Although this section allows FmHA to seek credit enhancements to reduce any possible budgetary exposure created by the guaranteed timely payments, the Committee is not authorizing FmHA to overcollateralize pools or to partially guarantee pools. The Committee further believes FmHA should first take all available administrative actions to reduce any potential budgetary impact before seeking additional credit enhancement.

Conservation Easements.—Section 610 amends the Farmers Home Administration Conservation Easement Program to waive the three-year cropping history requirement for upland wildlife habitat, and to set the maximum debt cancellation at the difference between the amount of the outstanding loans secured by the land and the current value of the land. The Committee believes that the program has not been used to the extent anticipated, and that these changes will improve program participation.

Except in the case of wetlands, land is not eligible for easement under existing law unless it has been row-cropped for three years prior to acquisition. The three-year cropping history requirement was intended to ensure that soil conservation benefits would result from a discontinuation or modification of cultivation on highly erodible land. That remains an important goal of the program. The Committee believes, however, that the requirement should not be applicable to easements aimed at conserving existing wildlife habi-

tat, whether on wetlands (which are currently exempt from the requirement) or on upland. On the other hand, this expansion of eligibility is not intended to be used as an alternative for a borrower, who has requested loan restructuring under the restructuring provisions of this bill, but was determined to be ineligible for restructuring, to obtain a reduction in his/her loan repayment responsibility.

The change in the maximum debt cancellation will improve program participation in those areas where farmland values have dropped so substantially that the current cap is not sufficient to enable farmers to cash flow (another program requirement). The compensation formula under present law requires the Secretary to pay for easements by forgiving that proportion of the owner's indebtedness to the Secretary equal to the proportion of the land over which the easement is acquired as compared to the total acreage securing the indebtedness, and the value of the land subject to the easement is set as the ceiling for compensation. This section, while retaining the basic compensation method, replaces the "value" cap with a new cap equal to the difference between the value of the easement land and the proportionate indebtedness on that land: in other words, the new cap would be equal to the amount the agency would lose if it foreclosed on the loan.

Interest Rate Reduction Program.—Under section 611 of this title, the Interest Rate Reduction Program, authorized through fiscal year 1988 by section 1320 of the Food Security Act of 1985, is extended through fiscal year 1993. Of the original authorization by Congress of $490 million, only $31.5 million has been spent by FmHA through FY 87. This section will extend that authorization so that greater use might be made of the program in the future. It also authorizes the Secretary to establish a demonstration project to increase the use of the program in a manner consistent with the goal of improving family farm viability.

The demonstration project is designed to ensure that family-size farm operators have the opportunity to purchase inventoried property put up for sale by Farm Credit System institutions certified for assistance by the Assistance Board created in Title I. With land prices in many areas low, this is an opportunity to return beginning and rebuilding farmers to the land. The project is also designed to recruit a new class of borrowers to be part of the Farm Credit System at time when new borrowers and greater loan volume are sorely needed.

This section makes use of existing and under-utilized statutory authorities to assist small farmers, and is expected to reduce the ultimate cost of federal assistance to the System. These authorities include the Interest Rate Reduction Program as well as unobiligated FmHA guaranteed loan authorization. If the project is implemented, FmHA will use available guaranteed farm ownership loans as well as unobligated guaranteed operating loan funds to carry out the program. It is the intent of the Committee that the Secretary shall, to the extent that the project is implemented, transfer unobligated guaranteed operating loan funds as needed to reach the goals set for this special program.

This demonstration project should reduce the amount of Federal assistance required by the Farm Credit System. More buyers for

FCS inventory will ease efforts to sell land and provide an infusion of cash to the System that will earn a higher return than inventory land.

Under Title I of this bill, the Treasury is required for the first five years of the assistance program to pay the full amount of interest on bonds issued by the Financial Assistance Corporation and no more than one-half the interest for the next five years. To the extent that additional land sales resulting from this project offset the System's need for Federal assistance, budget outlays should be reduced since the cost to the Federal government of this demonstration should be no more than the four percent interest subsidy for five years.

The demonstration project will work in the following fashion. A farmer will apply to FmHA to participate in the program. FmHA will certify eligibility according to regular FmHA farm ownership loan guarantee program standards. FmHA will provide the farmer with a loan guarantee and a certificate of eligibility for a five year, four point, interest rate reduction. The farmer will seek financing from the FCS or another private lender. Should the lender agree to make a one point interest reduction, the federal guarantee would increase from 90 percent to 95 percent. The farmer will be required to make a 15 percent downpayment. The farmer will also be subject to the same conservation requirements that pertain to FmHA farm ownership borrowers.

The provision sets a ceiling of $250 million worth of the System's land per year to be purchased under this program. It is not the intent of the Committee to discourage FCS institutions from selling land to others, but the Committee does intend that those FCS institutions certified to issue preferred stock avail themselves of this special program and include, to the maximum exent possible, the use of this program in their business plan. The Committee thus encourages institutions to seize the opportunity to attract new borrowers under the terms of this program.

The required graduation from interest reduction assistance after five years is an important feature of the program. Required graduation serves both to give participants realistic expectations and to define the limits of the government's involvement. The program provides a window of opportunity, not perpetual access to subsidized credit. By the fifth year on a loan amortized over 20 years, the borrowers' equity position would rise from 15% to nearly 30%, placing it within both FCS limits currently used for the sale of FCS inventory and those for Federal Land Bank loans. A five year record of debt payment and equity increases will also provide an important indication to a commercial lender of likely continued success.

The provision provides latitude to both FCS and FmHA to work out the details of this program. It will be important to allocate the credit and guarantee assistance in a manner consistent with the pattern of land inventory holdings. It will also be important that, when necessary, FCS inventoried parcels be subdivided into logical, family-size farm parcels consistent with the goals and objectives of the program. Within six months of the date of enactment, the two agencies will be required to develop a memorandum of understanding to implement the program. It is the intent of the Committee

that these joint arrangements be developed with considerable speed since large-scale inventory land resale programs are now under way in many districts.

Homestead Protection.—This section strengthens the provisions of the Homestead Protection Program initiated under the Food Security Act of 1985. That program allows a borrower to lease (with an option to buy) the borrower's homestead back from FmHA.

First, this title addresses a loophole in the 1985 Act. The 1985 Act did not require that property FmHA acquired through a third party foreclosure be eligible for homestead protection. This title closes that loophole. Under this title all property in FmHA inventory of which a borrower's home is located will be eligible for Homestead Protection regardless of the manner by which FmHA acquired the property.

This title also addresses another concern regarding homestead protections. Many borrowers with small operations, particularly those in some southern states, were unable to meet the $40,000 gross annual income requirement of the 1985 Act to be eligible for homestead protection. This problem is corrected by requiring that gross farm income be "commensurate with the size and location of the farming unit and local agricultural conditions, including both natural and economic conditions."

This title also requires the Secretary to send the borrower, whose land is in FmHA inventory, a notice of the Homestead Protection Program within 30 days of acquisition. In the past, FmHA has delayed for months before providing such a notice. In many cases, the notice came long after FmHA cut-off releases and began to offset ASCS payments. As a result, the longer the delay, the less likely the borrower would be able to take advantage of the program and the more likely the borrower will have been forced to leave the borrower's home. Many borrowers left to look for work without realizing that to be eligible for Homestead Protection they must continuously occupy their homes.

This title also gives the Secretary the authority to enter into agreements on Homestead Protection before it actually takes title to property. FmHA's current policy is to refuse to even consider whether the borrower would be eligible for Homestead Protection until FmHA has title to the property. The Committee heard reports that many FmHA offices encouraged borrowers to convey the property to FmHA by saying that FmHA would lease the property back to the borrower. Once the property had been acquired by FmHA, they refused to provide Homestead Protection because the borrower did not meet the income or other eligibility criteria.

This title provides the Secretary with the authority to enter into binding committments to lease the homestead back to the borrower in exchange for the borrower's conveyance of the property. This will allow the borrower to decide whether it is better to convey the property in exchange for the homestead protection rather than to file a bankruptcy or fight a foreclosure.

Homestead property is defined in this title as including improvements and up to ten acres. It is the Committee's intent that FmHA allow the borrower an option to rent or purchase a reasonable amount of land and buildings near the homestead as long as the borrower pays a fair rent or price for such property and as long as

the separation of the out-buildings and the up to 10 acres does not reduce the total value of the homestead and adjoining cropland. Provisions for easements for access to the adjoining land are contemplated by this provision.

This section is necessary because FmHA is often limiting the homestead property in such a way as to make it infeasible for the borrower to lease the property. It is the Committee's intent that Homestead policies be implemented as uniformly as possible across all States. Some FmHA offices incorrectly tell borrowers that if the five acres now allowed by FmHA contain outbuildings, the property cannot be leased under the Homestead Protection Program. In Iowa, there has been at least one case in which FmHA has told the borrower that the property to be leased would be the home and 10 feet around the house. FmHA currently limits the acreage to the smallest amount possible, sometimes even limiting so much as to require easements for the driveway, the well, and septic tank. The Committee intends that the driveway, well, septic tank, garage, and minor out-buildings (which can be separated from the adjoining property) be included in the homestead.

Debt Restructuring and Loan Servicing.—Section 613 of this title establishes a new FmHA debt restructuring program requiring the Secretary to consider restructuring proposals by borrowers delinquent on their loans. Under this program, the Secretary will restructure loans if the net return to the government is equal to, or greater than, the net return to the government through foreclosure and if the borrower can cash flow the restructured loan payment. The Committee does not intend for this section to apply to guaranteed loans.

FmHA currently incurs huge losses in borrower bankruptcies and liquidations. In fact, recent testimony by the Administrator of FmHA reveals that nearly $8 billion in loans payments are delinquent, much of this has been delinquent for over three years. Loan losses could be reduced by restructuring loans to a level the borrower can cash flow and make loan payments. Currently, FmHA does not consider writing-down principal or accrued interest to keep the borrower on the farm even where that would save the government money.

The number of delinquent borrowers affected by this provision is very large. Nationally over 90,000 FmHA borrowers are delinquent, and debt owed to FmHA was considered the primary cause of over 12,000 bankruptcy filings in the two years ending June 30, 1987.

Debt restructuring will stop the unnecessary displacement of family farmers and generate earnings for FmHA. It will prevent FmHA from forcing farm families off their land where that will cost the government more than allowing them to farm that land.

In addition, the FmHA restructuring provisions will aid the Farm Credit System's restructuring efforts. With the drastic decline in land values over the last several years, many FmHA second mortgages have little or no value. Yet FmHA currently refuses to restructure the borrower's payment obligations. FmHA insists on receiving its full annual payment, even though such an approach may jeopardize the payments on the Farm Credit System institution's first mortgage. In these instances, when FmHA controls the farmer's income, it often forces the System institution

into unnecessary foreclosure proceedings to protect their first lien. For these reasons, it is the intent of the Committee that restructuring include the release of valueless liens.

To be eligible for FmHA debt restructuring under this title, the delinquency must be due to "circumstances beyond the control of the borrower". The Committee intends that these circumstances could include, but are not limited to economic changes in recent years which have resulted in declines in farm prices, farm income, and farm land values or natural disasters such as hail, wind, flooding, drought, disease or pest infestation.

The title also requires, to be eligible for debt restructuring, that the borrower must have acted in good faith in connection with the loan. The Committee intends the term "good faith" shall not be used by the Secretary to arbitrarily exclude borrowers from the debt restructuring and loan servicing program. As absence of "good faith" shall not be inferred by such borrower actions as appealing the decisions of the Secretary, hiring legal counsel, the inability to pay in full on FmHA loans; or personality clashes with the employees of the Secretary. However, an absence of "good faith" would be demonstated by a conviction for conversion of collateral property or other documented facts which prove that the borrower has purposefully violated the terms of the contract with the Secretary.

In determining whether to restructure an FmHA loan the Secretary must consider the present value of the restructured loan. For approval of restructuring the borrower must be able to show a positive cash flow after taking into account the costs of operation of the farm, essential living expenses, off-farm income, and payments on other indebtedness.

The Commitee intends that borrowers be restructured at debt levels which will give them a reasonable opportunity to meet successfully their debt obligations. It makes little sense to restructure a debt at too high and be forced to foreclose later.

Regarding the principal and interest write-down provisions, it is the objective of the Committee to encourage the participation of the borrowers' other substantial, uncollateralized borrowers in the restructuring of the borrower's debt. It is not intended that every creditor, regardless of the amount of debt involved, be required to participate.

Small creditors such as the local doctor and dentist, local suppliers of fuel, grocers, local retailers of consumer goods, and other creditors holding debts below several thousand dollars shall not be required to participate. In addition, creditors such as bank credit card issuers shall not be required to participate because to do so would require the imposition of a costly burden on national credit institutions. On the other hand, the refusal of a large creditor, e.g. one holding more than $10,000 of debt, should not necessarily preclude the Secretary from restructuring the borrower's loan if the other conditions for restructuring are met. Additionally it is not the intent of the provisions that FmHA require other borrowers to write-down their debt. Nor was it intended that the Secretary could use the failure of other lenders to write-down their debt as a reason to deny debt restructuring and write-down to the borrower.

It is the Committee's intent that the Secretary shall administer the shared appreciation provisions so as to maximize the potential

recovery of debt which has been written-off or set-aside. However, the Secretary is instructed to negotiate with the borrower to determine the term (number of years) of the shared appreciation agreement and, in such negotiations, to attempt to avoid forcing the borrower into filing for bankruptcy.

Regarding the termination of restructured loans, the bill provides that if, at any time after the end of 18 months after the obligation of a farmer program borrower have been restructured in accord with the bill, the borrower is delinquent for 180 or more days regarding that delinquent (restructured) loan the Secretary shall give notice of intent to accelerate the loan. It is intended that borrowers be restructured fairly by the Secretary so that they would have a strong potential to continue farming. It was not intended that the Secretary restructure loans at such unreasonably high levels that the borrower could reasonably be expected to fail to meet the payments. The bill also provides an exception for the termination of restructured loans that become delinquent after 18 months after restructuring. It is intended that these exceptional circumstances include natural disasters, widespread crop or livestock diseases or pests, and economic circumstances such as further sharp reductions in farm income, farm land values, and farm prices.

Transfer of Inventory Lands.—Section 614 provides the Secretary of Agriculture with the authority to donate or transfer marginal, environmentally sensitive, or administratively important land, or any interest therein, in inventory as of the date of enactment to any Federal or State agency for conservation purposes.

The Committee is pleased with the cooperation to date between Farmers Home Administration and the U.S. Fish and Wildlife Service in the inventory land disposal process. The Committee encourages the two agencies to further cooperate in developing methods for requesting transfers or donations of inventory land and how best to administer conservation practices on such land.

The Committee further envisions that, for the purpose of this section, marginal land should include such lands as wetlands, highly erodible cropland, flood-prone lands, drought-susceptible lands, forestlands or unconverted grasslands; environmentally sensitive lands should include such lands as those that have existing or restorable value as wetlands; and lands of administrative importance should include such lands as lands that provide preferred access or which connect or combine separated parcels of marginal or environmentally sensitive land.

Title VII—Secondary Market in Agricultural Loans

Agricultural producers have a continuing need for credit in adequate volume, on flexible terms, and at competitive rates. Dependable sources of credit are essential to planning the financial aspects of most farming and ranching operations. The credit needs of farmers and ranchers are most successfully met where there is healthy competition among lenders. Vigorous competition is promoted by equal access among lenders to attractive sources of funding.

While the credit needs of agricultural producers cover the entire spectrum of short-, intermediate-, and long-term maturities, the

availability of long-term credit is particularly important. Real estate is the largest single capital commitment for agricultural producers, and the nature of the economic cycle for agriculture makes it essential that long-term credit be available at fixed rates.

The FCS has been the single largest lender to American agriculture. Over the last several years, FCS banks and associations have offered credit under terms which eventually proved disadvantageous to producers in a number of ways. While loans have been made across the full spectrum of maturities, including terms that can extend up to 40 years, the loans typically provided for adjustment at regular intervals in the interest rates charged. In the atmosphere of high rates that typified the late 1970's and early 1980's, the FCS maintained its rates below the market by using average cost pricing as overall interest rates rose. This allowed the System to offer extremely low rates—even as borrowers from other lending institutions were facing increasing rates. However, farmers who borrowed from the FCS because of these very attractive rates were faced, when interest rates fell, with the choice of leaving the System or paying the now less than competitive rates.

On the other hand, commercial lenders to agriculture, have encountered significant difficulties in attempting to make long-term credit available to agricultural producers. Rural commercial banks often do not have the funding flexibility to offer credit on a long-term, fixed-rate basis. Their limited ability to match-fund assets and liabilities in effect relegates commercial banks to the short-term end of the credit spectrum.

Life insurance companies and the FmHA have been the only other significant source of long-term credit outside the FCS. However, the losses incurred with the recent land devaluation and restructuring of the agricultural sector, the low rates of return in agriculture, and the illiquidity of such loans compared to other types of investments may cause insurance companies to curtail their exposure to agriculture.

To deal with these problems, Title VII of the bill adds a new Title VIII to the Farm Credit Act of 1971 and establishes the Federal Agricultural Mortgage Corporation (Mortgage Corporation) as a federally chartered instrumentality of the United States. The Mortgage Corporation will provide a secondary market facility owned by entities that originate and pool agricultural loans. This secondary market facility for agricultural loans will benefit both farmer and lenders.

While organized within the FCS, the Mortgage Corporation will be unique in terms of its powers, corporate structure, ownership, operations, and relations with other FCS entities and the Farm Credit Administration (FCA). The Mortgage Corporation is not organized on a cooperative basis and is not a service corporation. It will not be a captive corporation of FCS institutions. Rather, the Mortgage Corporation is a special purpose entity chartered by Congress to be owned by, and serve, all originators and facilities. The models of the Federal National Mortgage Association and the Student Loan Marketing Association apply.

The federal sponsorship of secondary market facilities for residential housing and student loans has led to the development of successful and totally private secondary markets for such loans. It

is the desire of the Committee that a similar phenomenon will occur with agricultural loans, and that the Mortgage Corporation will eventually become a private enterprise.

The creation of a secondary market facility for agricultural loans under S. 1665 will assure the availability of short, intermediate and long-term funding for agriculture from a variety of lenders. The availability of long-term credit for producers at stable rates will be increased. Greater liquidity and lending capacity of lenders to agriculture will result. The secondary market facilities established for residential housing loans and student loans have successfully used federal sponsorship to provide lenders and borrowers with significant flexibility and liquidity.

The creation of a secondary market in agricultural loans will provide greater flexibility to farmers and lenders. Farmers will have the opportunity to shop for credit from a wider variety of sources as traditional lenders renew their commitments and more lenders are attracted to the agricultural sector. Commercial banks, insurance companies, savings and loans, other lenders, and Farm Credit System institutions, will be able to offer fixed-rate financing.

The Mortgage Corporation will be narrowly focused in terms of powers. It will not be in the business of originating or pooling loans and, therefore, will not be in competition with the potential users of the secondary market facility. The organizational structure will be simplified to provide economies of scale and efficiency in administration. Originators and poolers will bear the initial risks of loan losses through the establishment of reserves at the loan pool level, thereby incorporating market discipline.

A secondary market facility for agricultural loans will provide a number of other identifiable benefits. Lenders will be able to recycle funds thereby increasing their capacity to serve rural communities. There will be increased ability to diversify an agricultural portfolio in terms of geographic location and commodity type. Investors will be able to use agricultural mortgage backed securities to lock in current rates or hedge against future rate changes and thus better manage their investment and cash flow needs. Commercial banks will gain advantages of being able to match-fund assets and liabilities, thereby reducing their interest rate risk exposure.

A secondary market should also contribute to reduced interest rates for producers. Experience in the residential housing secondary market demonstrates that mortgage backed securities reduce contract interest rates. As rates decrease, an increasing number of borrowers qualify under the loan underwriting standards, thereby generating additional volume of qualified loans. In addition, the competitive pressure from loans eligible for the secondary market puts downward pressure on conventional rates. As lenders gain access to the secondary market, their capacity to package credit and services increases to the benefit of the consumer. Farmers can anticipate more one-stop credit and service opportunities from a variety of sources.

Under this title, farmers will apply to local lenders for farmland loans, short-term production loans, or intermediate-term equipment loans. Lenders, following the underwriting and appraisal standards established by the Mortgage Corporation, will check with various certified poolers of farm mortgages to get the best terms for their

borrowers. A qualified loan which has first lien status on real estate will include the requirement that the interest of the mortgage holder will not be subject to any legal or equitable claims from a preceding fee simple or leasehold mortgage. The loan originators then sell the loans to the loan poolers that offer the best terms, while retaining the right to service the loans and maintain their relationships with the farm borrowers. Servicing will be according to standards established by the Mortgage Corporation. Loan poolers will be required to establish reserves at the pool level of not less than 10 percent of the principal amount of the loans in the pool.

The standards set forth in the title under which loan poolers may become qualified facilities are not intended to preclude entities with minimal experience in facility activities, or entities not already engaged in facility activities, from becoming qualified poolers where they can show the resources to meet the standards. It is expected that new entrants to the market will be encouraged by the establishment of the secondary market facility and the standards are to be applied accordingly.

The Committee did not intend to restrict participation as certified marketing facilities to existing primary dealers in U.S. securities. The Committee does not intend that capital standards for certified marketing facilities be set at a level which would exclude smaller and intermediate-sized financial institutions whose market base includes rural or agricultural communities. Nor is it the intent of the Committee that stock purchase be required.

Loan poolers will issue their own securities representing interests in, or obligations backed by, loan pools. The Mortgage Corporation will guarantee the timely payment of principal and interest on those securities, thereby making the securities attractive to institutional investors. The securities of qualified facilities that have been guaranteed by the Mortgage Corporation will have the status of "agency securities" identical to that accorded the securities of other federally sponsored secondary market facilities. The entire mechanism will result in funds being recycled back into the hands of lenders for additional lending activities.

Thus, the Mortgage Corporation established under this title utilizes the same basic secondary market mechanism which Congress put in place for residential housing loans and students loans. The mechanism uses the sponsorship of the Federal government to support the underlying activty of loan originators and poolers. The Mortgage Corporation is organized with specific powers to engage in credit enhancement activities. It provides its guarantee to securities which represent interests in pools of mortgages which meet established underwriting standards. The loans can be serviced by the lenders that originated the loans under standards established by the Mortgage Corporation.

The guarantee of the Mortgage Corporation is not a guarantee of the United States. The Mortgage Corporation is backed by a $1.5 billion line of credit to the United States Treasury which can be made available if needed to support the obligations of the Mortgage Corporation. The requirement that originators and poolers establish minimum 10 percent reserves at the loan pool level to absorb initial losses before the guarantee of the Mortgage Corporation dis-

tinguishes this secondary market facility from the residential housing loan and student loan models. The loan pool reserve requirements and the reserves which the Mortgage Corporation itself is required to establish makes it highly unlikely that the resources of the United States Treasury will ever be needed to support the Mortgage Corporation.

The Mortgage Corporation is organized under the Farm Credit Act of 1971. This provides the Mortgage Corporation with an identity that will facilitate acceptance of the securities it guarantees by professionals in the capital markets who trade and invest in securities of other federally sponsored agencies.

The bill directs that the President appoint an interim Board of Directors of the Mortgage Corporation (one of whom shall be designated by the President as interim Chairman) within 90 days after the effective date of this title. The process for selecting an interim Board of Directors should begin promptly after enactment to assure that the 90-day requirement will be met.

The role envisioned for the interim board is analogous to that of incorporators under State business corporation laws. The interim board will attend to the initial subscription and issuance of stock, oversee the nomination and election of the permanent board of directors, certify the election results, and turn over the affairs of the Mortgage Corporation to the permanent board. The development of by-laws and operating policies, including standards relating to underwriting, appraisal, servicing and qualification of facilities, are to be determined by the permanent board.

The Interim Board may not change the procedures defined in the bill for the election of the permanent Board members. It is anticipated that the minimum capital requirements prerequisite for the establishment of a permanent board of directors will be satisfied soon after the date of enactment of the title. Should this be the case, maximum deference is to be given to having the permanent board of directors carry out functions related to establishing requirements, guidelines and standards referred to in this title.

Title VII provides that the maximum number of shares of common stock that the Mortgage Corporation may issue and have outstanding at any one time shall be fixed by the Board from time to time. A common share issued will be fully transferable, except that Class B stock may only be held by FCS institutions and Class A stock may only be held by other entities entitled to vote for directors of the Mortgage Corporation. Shares shall be transferable only on the books of the Mortgage Corporation, and as restricted in the by-laws of the Mortgage Corporation.

No stockholder, other than a holder of class B stock, may own, directly or indirectly, more than 10 percent of the outstanding shares of that class of the common stock of the Mortgage Corporation. It is expected that FCS banks and associations will be holders of Class B stock. However, it is not possible to predict which institutions and districts will elect to act as originators or qualify as facilities. In addition, some FCS institutions may choose to enter into joint arrangements for such purposes. The prohibition of ownership is not extended to Class B stock in order to afford the FCS flexibility in this respect. However, each association is eligible to hold

Class B stock, and to choose its appropriate relationship with the Mortgage Corporation, without the approval of a FCS bank.

The title also authorizes the Mortgage Corporation to require each originator and each certified facility to make, or commit to make, nonrefundable capital contributions to the Mortgage Corporation if the capital contributions are reasonable and necessary to carry out this title. The Mortgage Corporation, from time to time, shall issue to each originator or certified facility voting common stock evidencing any capital contributions so made. This authority is intended to cover only unusual circumstances where the Mortgage Corporation needs resources to cover its current administrative costs. it is not a means for nullifying the principle of limited stockholder liability.

The size of the board reflects the need to afford broad representation among the respective constituent entities which can own Mortgage Corporation stock and vote to elect directors. The creation of three classes of directors of equal number reflects the need to carefully balance the interests of FCS institutions, entities that are not FCS institutions, and the general public. There is to be no distinction between the three categories of directors in terms of their duties and responsibilities as corporate directors to the Mortgage Corporation and all stockholders.

The powers of the Mortgage Corporation are narrowly focused. This reflects a distinctly different approach from other proposals for the creation of a secondary market facility for agricultural loans, and contrasts with the considerably broader powers found in the enabling statutes of other federally sponsored secondary market facilities such as the Federal National Mortgage Association. For example, the Mortgage Corporation has no authority to act as an originator, to warehouse loans, to establish a loan portfolio or to pool loans. This means that the Mortgage Corporation will not be in competition with entities engaged in these types of business activities, and the nature of the Mortgage Corporation will reflect the absence of associated risks. Loan origination, warehousing, retention, and pooling are activities performed by entities identified elsewhere in the title, including FCS banks and associations whose authorities are expanded by the bill to include such functions.

The Mortgage Corporation is the only entity within the FCS with authority to provide federally sponsored credit enhancement or engage in secondary market functions. FCS institutions that act as qualified facilities in pooling qualified loans may engage in activities relating to the issuance of securities representing interests in, or obligations backed by, such pools only where credit enhancement is provided by the Mortgage Corporation. The Committee noted the March 31, 1987 opinion of the General Counsel of the Farm Credit Administration (introduced into the Committee record on October 28, 1987) on the powers of FCS institutions with respect to secondary market activities. The Federal Farm Credit Banks Funding Corporation has no role in connection with the operations of the Mortgage Corporation.

In contracting with qualified facilities, it is expected the Mortgage Corporation will provide that in the event of default, the mortgages that constitute such pool will become the property of the

Mortgage Corporation, subject only to the unsatisfied rights of the holders of the securities based on such pool. The incidental powers of the Mortgage Corporation are intended to cover activities which would be related to administering such property.

The Mortgage Corporation differs significantly from other FCS institutions. The Mortgage Corporation will be owned by originators and poolers who purchase stock. However, the Committee does not intend to require an originator or pooler to purchase stock before they can be designated as an originator or pooler. The Board of the Mortgage Corporation has been carefully structured to balance the interests of originators and poolers that are not FCS institutions, the interests of FCS institutions, and the interests of the public. The Mortgage Corporation will have its own basis of federal sponsorship apart from FCS banks and associations. All federal credit enhancement for securities or obligations backed by loans originated by FCS institutions are under the purview of the Mortgage Corporation.

The Mortgage Corporation has been given authority to adopt standards for loan underwriting, servicing, and appraisal, and the certification of loan pooling facilities. These responsibilities are to be performed under the overall direction of the permanent board of directors of the Mortgage Corporation. The standards required to be adopted are not to be defined by the FCA.

The uniform underwriting, security appraisal and repayment standards for qualified agricultural loans to be established by the Mortgage Corporation pursuant to section 8.1(b)(2), and mentioned in section 8.5(a)(2)(E) and section 8.9 of this title, refers to the loan requirements of a prudent private mortgage investor in such agricultural loans. These standards would cover, but not necessarily be limited to, such criteria as: maximum loan-to-value ratios; income-to-debt service ratios; quality and form of appraisal; cash flow from operations; multiple income sources; net worth availability and quality of financial data; loan amortization schedule; appropriate credit checks; title and property insurance; repayment provisions; and loans terms. In establishing its standards for qualified loans, the Mortgage Corporation is to confine its operation, so far as practicable, to mortgage loans which are deemed by the Board to be of such quality as to meet, substantially and generally, the purchase standards imposed by private institutional mortgage investors. The guarantee provided by the Mortgage Corporation in the form of credit enhancement will make securities representing interests in, or obligations backed by, pools of those mortgages acceptable to such investors.

It is the Committee's intent that the role of the FCA, as the general regulator of the FCS, be limited under the title to the examination and audit of the operations of the Mortgage Corporation and the use of supervisory powers, where necessary, to protect the safety and soundness of the entity. Consistent with this approach, the FCA is authorized to assess the Mortgage Corporation for the cost of its examination, audit and supervisory activities directly related to Mortgage Corporation operations.

During Committee discussions, there was concern that the operations of the secondary market in the initial years could tend to attract borrowers away from the FCS, thereby contributing to a

further decline in FCS total loan volume and increase the costs of federal assistance. These concerns have been addressed in the title through the placement of limits on the total volume of credit enhancement which the Mortgage Corporation can provide during the three years immediately following enactment of the bill.

To allow for a limited phase-in, the title limits the amount of credit enhancement the Mortgage Corporation may provide in the initial three years after enactment of the bill. Beginning on the date of enactment of the bill, the Mortgage Corporation may provide credit enhancement for qualified loans with an aggregate principal amount not in excess of 2 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year (as published by the Board of Governors of the Federal Reserve System), less all Farmers Home Administration agricultural real estate debt.

During the second year, the Mortgage Corporation may provide credit enhancement for qualified loans with an additional principal amount not in excess of 4 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year, less all Farmers Home Administration agricultural real estate debt.

During the third year, the Mortgage Corporation may provide credit enhancement for qualified loans with an additional principal amount not in excess of 8 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year, less all Farmers Home Administration agricultural real estate debt.

In years subsequent, the Mortgage Corporation may provide credit enhancement without regard to the principal amount of the qualified loans so enhanced.

These limitations, or "caps", apply during the years immediately following the date of enactment of the bill. The Committee intends that by applying the caps beginning with that date, the interim and permanent Boards will bring the Mortgage Corporation to a fully operational level at the earliest date. The caps are to be applied cumulatively over the years so that the total amount of credit enhancements outstanding will increase each year. The caps reflect a balance struck between the need to assure that sufficient credit enhancement volume is generated in the early years to establish a viable secondary market facility and the concern that lenders accessing the secondary markets may attract business away from FCS institututions. The level of the caps considers that a significant portion of outstanding farm mortgage debt is represented by owner financing with balloon payment features. Such debt should be a market for refinancing through this secondary market.

While various other proposals surfaced during Committee deliberations to restrict the credit enhancement volume of the Mortgage Corporation during the initial years, the Committee rejected those suggestions. Consequently, no additional effort is to be made by the Board to minimize the impact of the Mortgage Corporation operation on FCS institutions.

The Mortgage Corporation is authorized to charge fees for its credit enhancement operations. An initial fee will be charged when the guarantee is provided, not to exceed one-half of 1 percent of the principal amount of the loans then constituting the pool. In each twelve month period thereafter, the Mortgage Corporation may

charge an annual fee not to exceed one-quarter of 1 percent of the principal amount of the loans then constituting the pool. The initial and annual fees charged are to be based on risks associated with the pool, taking into account the reserves required to be maintained at the pool level and the capital and reserves of the the Mortgage Corporation. The general authority to assess for charges and fees in reasonable amounts in connection with the administration of activities of the Mortgage Corporation is to be used in extraodinary circumstances where the initial and annual fees are not sufficient to meet the administrative expenses of the the Mortgage Corporation.

The use of retained subordinated participation interests to establish loan pool reserve requirements is available to any originator or certified facility. This provision provides flexibility to originators and certified facilities in structuring pools and related reserves. This option will also assure that FCS banks and associations, in a weakened financial condition, will not be precluded from acting as originators or certified facilities due to an inability to establish a reserve in cash.

The reference to loan pool reserves is framed in terms of at least 10 percent of the principal amount of the loans constituting a pool. The bill establishes a minimum reserve standard. However, it does not empower the Mortgage Corporation to impose a loan pool reserve requirement larger than 10 percent. Rather, originators and certified facilities will have flexibility to elect to establish a larger pool reserve in order to facilitate arrangements with the Mortgage Corporation, such as for lower enhancement fees based on a reduced risk exposure.

The fee provisions of the bill have been structured to afford pricing flexibility that will make use of the secondary market facility attractive to originators and qualified facilities. The title has been carefully structured to assure that the Mortgage Corporation will operate, at every level, as an entity owned and utilized by all categories of originators and poolers. Principles of balanced ownership and representation, equal treatment, and non-discrimination are interwoven throughout the title. The structure of the title has been fashioned to establish the Mortgage Corporation as a viable secondary market facility for agricultural loans which will achieve a level of successful operations comparable to that of other federally sponsored secondary market entities.

This title provides that the restructuring and borrowers' rights provisions of the bill do not apply to pooled secondary market loans. The Committee intends, however, that borrowers be fully advised of these requirements so that they can make an informed choice about whether to have their loan considered for the secondary market. A borrower and the lender will be able to contract concerning the rights and remedies that will apply to a loan where it is to be pooled and sold into the secondary market. As a pre-condition to certification by the Mortgage Corporation, facilities that pool loans will be required under the title to adopt standards and procedures relating to loan administration and disclosure to borrowers that are in conformity with uniform standards established by Mortgage Corporation. Those standards are required to be comparable to those adopted by other federally sponsored secondary

market facilities. Thus, a borrower who qualifies and whose loan is to be pooled would be fully informed of the terms and conditions of the loan and the remedies and rights that would attach as agreed, so as to be able to make an informed choice among alternative credit packages. The provisions of Title VII have no application to any loans which are not pooled and sold into the secondary market.

A borrower and the lender will be able to contract concerning the rights and remedies that will apply to a loan where it is to be pooled and sold into the secondary market. As a pre-condition to certification by the Mortgage Corporation, facilities that pool loans will be required under the title to adopt standards and procedures relating to loan administration and disclosure to borrowers that are in conformity with uniform standards established by the Mortgage Corporation. These standards are required to be comparable to those adopted by other federally sponsored secondary market facilities. Thus, a borrower who qualifies and whose loan is to be pooled would be fully informed of the terms and conditions of the loan and the remedies and rights that would attach as agreed, so as to be able to make an informed choice among alternative credit packages. The provisions of Title VII have no application to any loans which are not pooled and sold into the secondary market.

Title VII of the bill also amends the respective provisions of the Act relating to the powers of Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, Production Credit Associations, and Banks for Cooperatives so as to authorize each of those institutions to operate as originators and to become certified as facilities under this title. The Mortgage Corporation is the only entity within the FCS with authority to provide credit enhancement to mortgage backed securities. FCS banks and associations are each empowered to exercise such new authorities individually or together with other like or unlkike FCS institutions, and to contract freely with entities that are not FCS institutions in originating or pooling loans. An association is not required to use a FCS bank to access the secondary market facility or to obtain approval of a FCS bank in order to act as an originator, or to become or act as a certified facility.

While this relates more to Title I note that the Farm Credit Administration is authorized to recover the costs of its examination and supervisory activities directly related to the operations of the Federal Agricultural Mortgage Corporation established under Title VII of the bill. The agency is to determine the amount that will be required to pay the cost of supervision and examination directly related to the Mortgage Corporation, and to assess and collect such amount from time-to-time during the fiscal year. The agency is required under another part of the bill to take specific factors related to the nature and limited scope of the Mortgage Corporation activities in exercising its jurisdiction. The general overhead expenses of the agency related to its broad role as regulator of the FCS are not to be included within the cost determination. The costs and expenses included must be, to the maximum extent possible, specific and identifiable, and related only to cost directly related to the supervision and examination of Mortgage Corporation operations but may include an appropriate share of general overhead expenses.

TITLE VIII—MISCELLANEOUS

Title VIII has three major sections—it requires outside directors for Farm Credit System associations and for Farm Credit System District Boards of Directors, requires the Secretary of Agriculture to offer the right of first refusal to holders of notes and other obligations sold under the loan asset sales program of FmHA, and provides for the placement of inventory land (held by the Farm Credit System or by the Secretary of Agriculture) into the USDA Conservation Reserve Program (CRP).

Each production credit association and each Federal land bank association shall develop procedures to elect one outside director to their board of directors. Farm Credit System district boards and the board for the Central Bank for Cooperatives shall also contain an outside director. The Committee believes that receiving this outside input will improve the operation of the System.

The Committee desires that issuers of notes and obligations being sold under the requirement of the Budget Reconciliation Act of 1986 be given an opportunity to purchase any unsold obligations and notes for 30 days prior to the sale at a price determined by discounting the payment stream of such note or other obligations at the yield on the most recent sale of loans from the portfolio with appropriate adjustment. The criteria for setting the yield for the market interest rate shall be the same as was used in the prior sale. The calculation for establishing the sales expenses of such sale shall not exceed 1% of the sale price.

Title VIII also adds a new paragraph to section 1235(a) of the Food Security Act of 1985 to waive the three-year ownership requirement with respect to highly erodible cropland that is administered on the date of enactment of this Act by (1) an institution of the Farm Credit System, (2) the Secretary of Agriculture under the Consolidated Farm and Rural Development Act, or (3) a private lender. If such land is thereafter transferred to the operator of a "family sized farm," such land may be eligible for the CRP even though the family farmer has not held the land for three years. Contract offers from those who do satisfy the three year test however, will have priority over offers eligible under this new provision. In the case of eligible land that is enrolled in the Conservation Reserve Program as a result of this section, the Secretary shall make payments under this section only to family farmers who purchase or lease such cropland from the lending institution or FmHA and who enter into a contract under the subtitle.

"Family farmer" is defined as an owner or operator, as of the time immediately before such sale or lease of not larger than a family-size farm located in a State, as defined by the Secretary for farms in the State under the Consolidated Farm and Rural Development Act. The Committee has found that the inventory property of FCS institutions is a large drain on System resources. By allowing the System and other lenders to sell land that can immediately receive payments under the CRP, this title should help stabilize land values in many areas, promote sound conservation practices, and improve the earning potential of lenders with large amounts of foreclosed property.

In addition, if the Secretary receives contract offers for participation in the Conservation Reserve Program from owners or operators who satisfy the requirements of Section 1235(a)(1) of the Food Security Act and family farmers who satisfy the requirements of this section, the Secretary shall give priority to the offers submitted by owners and operators who satisfy the requirements of Section 1235(a)(1).

Present law provides, with certain limited exceptions, that land may not be placed into the Conservation Reserve Program if ownership in the land changed in the three years preceding the first year of the CRP contract period. This section amends the program to provide an additional exception where the change in ownership is caused by foreclosure and the property has been redeemed by the owner pursuant to state law. As this exception is not intended to create greater rights by foreclosure than the farm owner would have without foreclosure, this exception will apply only if the owner would otherwise have been able to qualify the land for the program. Thus, the owner generally must have held the land for a total of three years which was continuous except for the foreclosure and timely redemption period. In such cases, the temporary change in ownership resulting from the foreclosure and redemption will not prevent the placing of that land in the CRP.

Committee Consideration

Hearings

On February 26, 1987, the Subcommittee on Agricultural Credit held a hearing on the Farm Credit System. Witnesses included: Wayne Rasmussen, National Agricultural Library; the Honorable Charles Grassley, United States Senator from Iowa; Dean Kleckner, American Farm Bureau Federation; David Senter, American Agriculture Movement; Jack Kelsey, National Farmers Union; Grant Buntrock, National Farmers Organization; Leroy Watson, National Grange; Ron Voth, Oklahoma Wheatgrowers Association; Ray Hankes, National Pork Producers Council; Eugene Severens, Center for Rural Affairs; Lyman Holman, National Association of Farm Credit System Stockholders; the Honorable Frank Naylor, the Honorable Jim Billington, and the Honorable Marvin Duncan, Farm Credit Administration Board; H. Brent Beasley, Farm Credit Corporation of America; Sam Eberly, Farm Credit Services of Wichita; and Larry Buegler, Farm Credit Services of St. Paul. See Senate Hearing 100–134.

On March 11, 1987, the full committee held hearings on proposed changes in the Farmers Home Administration credit regulations. Witnesses included: Vance Clark, Farmers Home Administration; Ron Allbee, Commissioner of Agriculture for the State of Vermont; Frank Kirschenheiter, Credit Review Board of North Dakota; Diane Thomas, FmHA Supervisor for Seminole County, Georgia; the Honorable Hubert H. Humphrey, III, Attorney General for the State of Minnesota; the Honorable Nicholas Spaeth, Attorney General for the State of North Dakota; the Honorable Roger Tellinghuisen, Attorney General for the State of South Dakota; the Honorable Robert Spire, Attorney General for the State of Nebraska; Eugene Severens, Center for Rural Affairs; Jim Massey, Farmers

Legal Action; Alan Bergman, North Dakota Farmers Union; and Brian P. Crowley, General Accounting Office. See Senate Hearing 100-175.

On March 26, 1987, the Subcommittee on Agricultural Credit held a hearing on farm credit proposals. Witnesses included: the Honorable James McClure, United States Senator from Idaho; the Honorable Robert Henry, Attorney General for the State of Oklahoma; H. Brent Beasley, Farm Credit Corporation of America; Dean Kleckner, American Farm Bureau Federation; Ray Hankes, National Pork Producers Council; Neil Harl, Iowa State University; Jack Dahl, National Cattlemen's Association; Cecil Huff, National Save the Family Farm Coalition; Luman Holman, National Association of Farm Credit System Stockholders; Dean Biery, Production Credit Association of Northern Ohio; John Dean and Jack Dickey, Independent Bankers Association of America; Robert Ranger and Paul Lindholm, American Bankers Association; John Ball, American Council of Life Insurance; Donald Cundall, Guernsey, Wyoming; and Don Schieber, Kildare, Oklahoma. See Senate Hearing 100-134.

On June 9, 1987, the full committee held a hearing on S. 1179, a bill to reform and modernize the Farmers Home Administration. Witnesses included: the Honorable Vance Clark, Farmers Home Administration; James Massey, Farmers Legal Action Group; Eugene Severens, Center for Rural Affairs; the Honorable Sarah Vogel, Assistant Attorney General for the State of North Dakota; Ralph Paige, Federation of Southern Cooperatives and Land Assistance Fund; Gary Bergstrom, National Bank of Harvey, North Dakota; Lonnie Parsons, Western State Bank, North Dakota; Cecil Huff, National Save the Family Farm Coalition; and Dr. Max Glenn, Oklahoma AG-LINK Coalition.

On June 9, 1987, the Subcommittee on Agricultural Credit received testimony from the Farm Credit System Capital Corporation Board: John St. John, Chairman; Howell Hughes, Leo Allmendinger, and Mark Wilkinson, board members; Francis Ferguson, Vice Chairman; and Hugh Macklin, President and CEO.

Subcommittee Consideration

September 16, 1987

On Wednesday, September 16, 1987, the Subcommittee on Agriculture Credit met to markup farm credit legislation. Chairman Boren proposed that S. 1665 be adopted as the bill number and that the consensus proposal be used as the markup vehicle. The Subcommittee agreed that if an objection or proposed amendments were made to the consensus proposal, it would take a majority vote to adopt any particular proposal. Chairman Boren stated that it was his intention to have one final Subcommittee meeting at which matters previously adopted could be reconsidered.

The Subcommittee then considered the section providing for state mediation programs. Senator Daschle noted that the only differences among the alternative proposals were the level of funding and the amount of time allowed to arrange an initial meeting after receipt of a mediation application. Senator Melcher proposed and

the Subcommittee agreed to adopt the recommendation of 21 days for arranging such meetings.

Senator Breaux raised the issue of how long mediation could take, noting that borrowers would want to prolong it because foreclosure proceedings would be suspended during that time. The Subcommittee agreed to report language clarifying that the legislation sets a minimum standard of one meeting to fulfill the mediation mandate, and that States would not be required to go beyond that.

The Subcommittee engaged in an extended debate about the funds to be authorized for the mediation program. The consensus proposal recommended $5 million in FY 1988, $10 million in FY 1989, $15 million in FY 1990, and $20 million in 1991. Expressing doubts about securing funding for this section, Senator Lugar proposed that the program be authorized at the level of $15 million annually for two years as an alternative to the consensus proposal. Senator Harkin responded that mediation can cost less than litigation and foreclosure. Senator Melcher moved that the Subcommittee authorize up to $15 million in 1988 and 1989, and the Subcommittee agreed.

Expressing concern over inserting the Federal Government too deeply into the area of state mediation programs, Senator Lugar questioned the necessity of including in the bill specific federal guidelines for state mediation programs. Senator Cochran offered an amendment that would delete the requirements, arguing that no program presently in place could meet the requirements under the consensus proposal. Senator Boschwitz suggested that the contribution to a state should be less than $1 million and suggested $750,000 per state per year. The Subcommittee agreed to waive the requirements for the 15 existing programs, subject to a staff report, and agreed to lower the maximum contribution to an individual State from $1 million to $750,000.

Senator Harkin offered and the Subcommittee agreed to several technical amendments to the mediation section, and the Subcommittee recessed.

During the afternoon session, the members discussed the secondary market section of the consensus proposal. During the discussion, questions were raised regarding the size of the Mortgage Corporation Board and the overall limit on the amount of stock that any one entity could hold. Senator Boschwitz questioned whether it was necessary to have 15 members on the Mortgage Corporation Board. The Subcommittee agreed that the 15 member board in the consensus proposal was acceptable.

Senator Karnes offered an amendment that would allow entities, including Farm Credit System institutions, that act as poolers to use "retained subordinated participation interest"—in lieu of cash—in establishing their 10 percent reserves. Senator Boschwitz clarified that only poolers and originators can purchase stock, but that they are not required to purchase stock to be designated as a pooler or originator.

Chairman Boren then asked Mr. Charles Sethness, Assistant Secretary of the Treasury, if he had any comments to make on the secondary market provision. Mr. Sethness stated the Treasury's opposition to the secondary market, arguing that the Farm Credit System could already borrow at rates similar to currently operat-

ing secondary markets. He contended that creating a secondary market would allow private institutions to take advantage of that same borrowing privilege to compete with the FCS in providing money to the FCS's existing good customers. He noted that a package of technical amendments had been submitted to the subcommittee staff in the event that a secondary market was adopted.

Senator Cochran asked Mr. Sethness if a large cash infusion to assist the System would be necessary without a secondary market. Mr. Sethness replied that a secondary market would increase the amount of cash that the Treasury has to put into the System because of the loss of loan volume in the System. He stated that the problem was not availability of sufficient funds to loan, but rather the availability of people with sufficient credit-worthiness to borrow.

At this point, the Subcommittee adopted the Karnes amendment, and an amendment indicating that nothing in the Act is intended to expand the authority of banks to deal in or underwrite securities.

Senator Boschwitz expressed concerns about the effect of the secondary market on the Farm Credit System. The members further discussed the effect that the secondary market would have on System institutions. Pending further debate and discussion of the Treasury's technical amendments at the next meeting, the Subcommittee agreed to tentatively adopt the secondary market provision and adjourned.

September 23, 1987

The members returned to the secondary market issue and discussed at length an amendment to phase-in the credit enhancement that could be provided by the Mortgage Corporation. Specifically, the Mortgage Corporation would be allowed to provide credit enhancement of up to $2 billion for qualified loans during the first year of operation, up to $5 billion during the second year, up to $10 billion during the third year, and unlimited credit enhancement during the fourth year. By a roll call vote of seven to one, the Subcommittee agreed to limit credit enhancement, but to determine the dollar amount at a later time.

The Subcommittee agreed to an amendment to allow the Mortgage Corporation to charge facilitators of secondary market loans an initial credit enhancement fee of not more than .5%, and an annual fee thereafter not to exceed .3%; agreed to an amendment that would exempt pooled loans from the restructuring and borrowers rights provisions under the Act; and agreed to four additional technical amendments to the secondary market section before recessing.

During the afternoon session, the Subcommittee took up the issue of tax exemptions for the Mortgage Corporation. The members agreed to exempt the Mortgage Corporation from State and local taxes, the same exemption that is afforded "Freddie Mac" and "Fannie Mae." Five technical amendments to the secondary market section were adopted.

The Subcommittee turned to the financial assistance provision. Chairman Boren noted that the bill he had introduced with Sena-

tor Melcher would have authorized the Farm Credit Administration to provide financial assistance, rather than creating a new board. He also stated his interest in expanding the size of the FCA board. Senator Daschle argued for creation of a new board, as recommended by the General Accounting Office, stating that a new bureaucracy would not be created because the members of the board would be Federal officials. Senator Lugar pointed out specifically that the reason legislaition is before the Congress is the System is facing an emergency as a result of the failure of its leadership. He emphasized that in view of the current situation the bill must provide for a Board with the power to get the job done, suggesting that logical membership for the Board would be the Secretaries of Treasury and Agriculture and the Chairman of the Federal Reserve Board.

Considerable discussion then followed of the expected functions of the Board and the form in which assistance would be extended to the System. During the discussion of the use of guaranteed to raise money for this purpose Senator Lugar pointed out the similarity of this proposal to the process used by Congress in the case of the Chrysler Corporation assistance package.

The members then agreed to the sections that would create and set guidelines for the Farm Credit System Assistance Board and would authorize the creation of the Assistance Fund. Chairman Boren stated that he would like to return to the issue of expanding the FCA board at a later time. The Subcommittee began consideration of the types of funds that would be deposited in the Assistance Fund.

September 29, 1987

The Subcommittee discussed at length the issue of funding for Assistance Board activities. Initially, the discussion focussed on the question of making use of the existing revolving fund to allow the FCA to provide initial funds for immediate use by the Assistance Board. Senator Lugar indicated his support for the staff consensus proposal, but suggested that the FCA be authorized to use the revolving fund monies to meet emergency problems before the Assistance Board is in business. The members agreed to the proposal as amended—that is, the FCA would be empowered, if certain criteria were met, to draw on the $260 million revolving fund until the Assistance Board is in full operation, and when the Board is fully operational, it could draw on the revolving fund without the approval of FCA.

A number of questions were raised about how the Congressional Budget Office and the Office of Management and Budget would score the funding provisions. Specific issues raised were the cost of issuing bonds through the Board versus the cost of issuing Treasury obligations, the cost of various bond maturities, and the cost of annual versus semi-annual coupons. With several questions having been raised on various budgetary matters, Senator Lugar suggested that the staff meet with OMB and CBO representatives to try to get these matters more specifically defined. Another question was raised regarding what recourse would be provided in the event that

an institution defaulted on its obligations after being provided with assistance from the Board.

The Subcommittee adopted an amendment offered by Senator Cochran that would clarify the authority of the Assistance Board to issue regulations to implement the provisions of the financial assistance section, with a proviso suggested by Senator Conrad that the delineation of authority not result in a duplication of audits. The members agreed to adjourn and to revisit the unanswered questions regarding funding, system liability for repayment of assistance, and the specific powers to be granted to the Board at the next meeting.

September 30, 1987

During the morning session, staff reported to the Subcommittee on the cost of having the Assistance Board issue bonds versus the cost of having the Treasury raise funds for financial assistance. Staff explained that CBO determined that the face value of bonds issued by the Board would not be scored on budget, but that the government's portion of the interest payments would be scored on budget. OMB, on the other hand, determined that both the face value of and interest on the bonds should appear on budget. Representatives of the two agencies promised to consult and report back to the Committee. Senator Melcher then asked the staff to look into the budgetary impact of having the Federal Reserve Board provide funds to the Assistance Board.

The members reviewed and adopted the section describing the general corporate powers of the Assistance Board, and started a lengthy debate about the Temporary Powers of th Board. At issue was how best to define and delineate the powers of the board in order to avoid conflict or overlap with the regulatory powers of the Farm Credit Administration. This issue was explored at length by the members. During the discussion Senator Lugar pointed out differences between the staff consensus and the bill he originally introduced, stating his strong feeling that several of the powers he originally proposed be put back into the bill. Chairman Boren, and Senators Boschwitz and Daschle then raised questions which further refined the various powers under discussion. The Subcommittee decided to redraft this section and return to it later. A section providing for payment of administrative expenses was adopted. The section providing for termination of the Capital Corporation and the establishment of the Assistance Board was briefly outlined before the Committee recessed for the morning.

During the afternoon session, the Subcommittee agreed that the Board would assume all of the debts, obligations, contracts, and other liabilities of the Capital Corporation; and that the mandatory third quarter assessments required by the 1985 Farm Credit Amendments would be reversed but the voluntary capital preservation agreements would be "reinforced."

Senator Boschwitz expressed concern about the level of assessments and requested the Farm Credit System to provide information showing the amounts that could be collected at varying assessment levels. After some discussion, the Subcommittee adopted the section providing for a new one-time assessment (mandatory pur-

chase of stock) to fund the Board. Under the proposal, the Board would require each System bank to make available funds equal to the amount by which the institution's surplus exceeds five percent assets (less allowance for loan losses) in the case of banks, or thirteen percent in the case of associations, pending a report on the effect of reducing the percentages.

The members then considered a provision that would establish Federal restructuring guidelines that would be imposed on any district that received assistance under the bill. Districts which receive assistance would be required to set up a special asset group to review foreclosure determinations and these determinations would be reviewed by a National Special Asset Council. The Subcommittee discussed whether the National Council should review all or a random sample of foreclosure determinations. The staff consensus, which would have resulted in the review of all foreclosure decisions by the lender, as well as by the district and national review groups, was evaluated. Expressing concern that three levels of review could create a blockage of the whole system, Senator Lugar proposed that the subcommittee consider having the national review be based on a sampling of the decisions instead. After further discussion resolution of the question was deferred until the next meeting.

October 1, 1987

During the morning session, Senator Lugar reopened the discussion of the review of foreclosure decisions by proposing specific language to be considered for inclusion in the bill to provide for national review on a sample basis. The proposal was discussed and the Subcommittee agreed to insert language that would instruct the Board to review a sufficient number of foreclosures to assure itself that districts are following the appropriate policies on restructuring, and to suggest in the report that 10 percent would be a sufficient number.

The members then took up a section describing requirements for loan restructuring. The section provided that within six months after enactment, each district bank would review every loan in non-accrual status and determine whether the loan would be restructured. Senator Cochran suggested a timeline of 12 months but Senator Boschwitz suggested 6 months. The Subcommittee agreed to 9 months.

After considering a number of issues, Senator Lugar requested that Chairman Boren turn again to the issue of the temporary powers of the Assistance Board. The provision drafted by Senator Lugar was reviewed by the members and adopted without objection by the Subcommittee.

The Subcommittee proceeded to the title providing for restructuring of the Farm Credit System. A provision to set up a central reserve account in January 1992 was adopted. The Reserve Account Board would assess premiums for System institutions based on 5 percent of surplus in the case of banks, and 13 percent in the case of associations.

A provision protecting borrower stock for five years was adopted.

The Subcommittee then considered the trigger mechanism for financial assistance. Staff explained that financial assistance would

be triggered for Federal land banks when capital fell below 2.5% of gross loans, and for FICBs and PCAs when capital fell below 5% of gross loans, in such amounts as necessary to maintain capital at those percentages.

The Farm Credit System spokesman recommended that the Subcommittee allow an institution to apply for financial assistance if its capital were impaired at all. The Assistance Board would be required to make a determination of whether the institution needed assistance, liquidation, or merger before stock value falls below 75%. The members discussed adjustments to the trigger percentage and how that would affect the cost of interest paid by the Federal Government, the district would receive assistance, and the timing of assistance for various districts.

October 2, 1987

Staff informed members that a letter was received late the previous evening from Deputy Director Wright of the Office of Management and Budget regarding 4 options for providing assistance to the FCS. Two options would score the face value of the bonds on-budget, and two would score them off-budget. The Subcommittee agreed to take up the issue after staff and members had more time to review the letter.

Chairman Boren clarified a point made at a previous meeting that even if System institutions received assistance, they could not be forced into a merger without stockholder approval.

Members discussed further the System proposal for the assistance trigger mechanism. Chairman Boren suggested that the Subcommittee may want to require that assistance be in an amount sufficient to ensure the institution's viability for some period of time, such as five years. Mr. Sims, the spokesman for the System, pointed out that undefined "viability" has been a problem for the Capital Corporation. Senator Melcher stated that he supported the maintenance of stock at 75 percent.

Mr. Sethness pointed out that liquidation would not be permitted unless another institution took over the territory. Chairman Boren suggested that the language be amended to read that the Board may liquidate an institution if the cost of assistance exceeds the cost of liquidation, and provide in a separate section that the FCA would be required to expand the territory of an existing institution to take the territory of a liquidated institution.

October 6, 1987

Staff reported on a plan based on a suggestion from OMB regarding the assistance mechanism. OMB contended that the Assistance Board was essentially governmental in nature because it had two Cabinet members and the Federal Reserve Board Chairman on its board, and had many authorities that were essentially governmental. Therefore, its bonds would have to be scored against the budget.

To avoid having the bond scored against the budget, the Subcommittee considered a new approach that would create a Farm Credit System Financial Assistance Corporation, which would be a wholly-owned subsidiary of the Farm Credit System, and capitalized by

the member banks. The Corporation would issue bonds—100% guaranteed by the Treasury—and would buy preferred stock from troubled System institutions.

The Assistance Board would maintain its existing powers, but rather than giving funds to troubled entities, it would simply authorize those banks and associations in trouble to insure a fifteen-year preferred stock, if the Board approved the business plan. The face value of the bonds would not be scored against the budget. Mr. Sethness estimated that the Financial Assistance Corporation bonds would probably trade 50–70 basis points above Treasury obligations.

Senator Boschwitz inquired whether the bonds issued should have a maturity of 15 years or whether there should be some flexibility for the Assistance Board in the length of the bonds it issues.

Senator Melcher questioned the emphasis on getting the cost of the bonds off-budget. He noted that Treasury had informed the Subcommittee that the cheapest way to raise money would be for Treasury to sell the bonds, which would save taxpayers money and lower rates in the FCS. Senator Lugar pointed out that if the assistance is scored against the budget, a budget waiver would be needed to bring the bill up on the Senate floor, and the level of agricultural spending in other areas made the prospects of getting a budget waiver difficult.

Senator Lugar asked Mr. John Diehl to address the Subcommittee regarding his litigation for the Central Kentucky PCA. Senator Lugar directed the attention of the members to the possibility that the constitutional challenge in this case could be raised if PCAs' surpluses are assessed under the provisions of this bill. Since PCAs are not jointly and severally liable, it has been argued that the proposed assessments violate the Fifth amendment prohibition against a taking of private property for a private use. Further, it is contended that the assessments are not proportional to any benefit to be received.

Member were critical of the associations for avoiding contribution to the System's recovery. They discussed whether using a franchise fee or tax mechanism rather than an assessment would avoid possible litigation. Staff noted that unlike previous legislation, S. 1665 would clearly confer benefits on every member institution. The Subcommittee discussed increasing the assessment of associations, but decided to return to the issue later.

The members discussed further whether bonds should be on-budget or off-budget, and then tentatively adopted the off-budge proposal. Senators Melcher and Harkin expressed interest in further study to see if interest rates would be lower and if it would cost less to have Treasury raise the funds.

October 7, 1987

The Subcommittee met to consider the issue of mergers. Farm Credit Administration representatives explained current law on mergers. Staff explained that the proposed language was permissive in the sense that it would allow most forms of mergers and transfers of power, including transfers of lending authority, within districts as long as those transfers or mergers were approved by

the FCA, the affected boards of directors, and a majority of shareholders. As drafted the staff consensus provided for mergers to be subject to stockholder approval and required that the validity of any vote would be subject to the participation of at least 30 percent of the eligible voters. Senator Lugar pointed out the potential difficulty what would be faced in meeting this threshold level and proposed that it be eliminated. The proposal was adopted subject to a modification proposed by Chairman Boren that these votes be subject to a cooling off period and reconsideration by the voters.

During the discussion, Chairman Boren proposed that the initial board of a new institution created by merger be composed of some representatives from the previous entities. Senator Karnes suggested that one or two outside directors be required, and the members agreed to consider that proposal later. The Subcommittee further clarified that a merger plan must provide for only one supervising institution.

The members considered a section that would allow an association or a bank to leave the System if a one-time assessment were paid. The assessment would be paid on surplus in excess of 5 percent for banks and 13 percent for associations. System representatives stated that they didn't anticipate any exodus; Senator Lugar noted this would be a further deterrent. Senator Boschwitz asked Treasury Assistant Secretary Sethness what Treasury would recommend as the assessments on an institution wanting to leave the System.

At the suggestion of the Treasury, the percentage for associations was reduced to 6 percent.

Senator Melcher indicated that he might offer an amendment to create one Bank for Cooperatives, and Senator Karnes indicated that he had an amendment concerning small cooperatives.

October 8, 1987

Chairman Boren asked staff to comment on taxation under the bill. Staff reported that the bill preserved the same tax structure as under current law. Federal Land Banks would be exempt from taxation, and therefore any merged entity that included a FLB would have tax-exempt status. Chairman Boren said he would consult further with Senator Bentsen on this provision.

Chairman Boren noted that work was ongoing on the funding mechanism, and that the stock, borrowers rights, and Farmers Home Administration sections were still unfinished. Some debate followed regarding the inclusion of the Borrower Rights and Farmers Home titles in the bill. Senator Lugar pointed out that these provisions are controversial and could be a potential cause of a veto of the bill unless a reasonable consensus on the provisions can be found. Noting that these provisions may tend to increase the cost of credit to the majority of farmers who are not now faced with financial crisis, he observed that there exists a real argument within the farm community on the merits of the issue. Senator Conrad responded that he strongly believed it should be included.

The Subcommittee then turned to the FCS borrowers rights section. Staff highlighted changes from current law. The Subcommittee agreed that current FCA forbearance regulations, to the extent

they did not conflict with the new statute, would remain in effect until new regulations were issued, and asked staff to suggest a time limit for applying the old regulations at the next meeting.

The Subcommittee turned to the section that would allow a family farmer whose application for restructuring was refused to seek review. Chairman Boren expressed concern about allowing the same people, initially making the determination that a loan was ineligible for restructuring, to be on the credit review committee. The Subcommittee agreed to ensure that anyone making the initial decision on a loan could not serve on the credit review committee when that loan is reconsidered.

Senator Karnes asked if the Administrative Procedures Act was applicable to the credit review committee. Staff clarified that the Administrative Procedure Act would not apply to this section. The members asked staff to look at whether there was a need for a further appeal after initiation of foreclosure.

October 14, 1987

The Subcommittee returned briefly to the issue of funding and governance of the Financial Assistance Corporation. Staff reported that to assure that assistance is not scored against the Federal budget, a majority of the Assistance Corporation board must be non-Federal officials. To keep the Secretaries of Treasury and Agriculture and the Chairman of the Federal Reserve on the board, four other members must be named who are not appointed by the President. Staff suggested naming the four in the statute. Reflecting on the new proposal, Senator Lugar pointed out that the new approach to meet the budgetary concern creates a new dilemma—namely, that the Assistance Board was intended to be a watchdog Chrysler Assistance Board style entity, but that that character is now being compromised. The question to be answered is how to maintain the same sense of control necessary to protect the interests of taxpayers with a board composed mainly of private individuals. Staff was requested to look further into the matter and provide the Subcommittee answers to the questions at the next meeting.

The Subcommittee returned to the issue of borrowers rights. Staff opened the topic by pointing out for the Subcommittee that it previously covered the requirement that the Farm Credit district develop a restructuring policy within 60 days, after enactment of the bill, to restructure distressed loans of family farmers. The Subcommittee had agreed that if a family farmer's restructuring application was denied, the family farmer would have the right to seek review by a credit review committee that each district would set up.

Chairman Boren clarified that under current law, all borrowers are eligible for restructuring, but under this proposal only family farmers would be eligible.

Members discussed a proposed right of first refusal provision, which would give the previous owner of property, acquired by a System institution through foreclosure, the right of first refusal if such property is to be sold or leased. Senator Melcher proposed a clarification that a previous owner would have right of first refusal

on a negotiated sale at the lowest price offered under the same terms and conditions. Several questions were raised about the language before the Subcommittee which then decided to have staff refine the language and bring it back for consideration at the next meeting.

October 20, 1987

The Subcommittee took up the appeals section of the Farmers Home Administration title, and discussed a proposal that would put all appeals, including those appeals on restructuring, under one standard appeals process that would apply to all FmHA actions. The question of cost was raised; the Department said they would like to take it out of either the existing salaries and expense category or the Agricultural Credit Insurance Fund revolving fund. The members tentatively adopted the FmHA title.

Senator Melcher noted that he had recommended a secondary market for FmHA loans, and the Subcommittee decided to return to the proposal pending further discussions with the department.

The Subcommittee then reconsidered the assistance mechanism section. A provision was added setting forth factors for determining the costs of liquidation to assure that any capital impairment would not trigger an automatic liquidation.

The members adopted a proposal that would "grandfather" existing state mediation programs that met certain minimum requirements, and added report language that would require a review of all programs two years after enactment of the bill.

The Subcommittee began consideration of a provision that would allow partnerships or subsidiaries set up by a cooperative to borrow from the Bank for Cooperatives as long as the cooperative retained 50 percent or more control over the partnership or subsidiary. Under current law, there must be 100 percent control. The members decided to return to the issue at the next meeting.

October 21, 1987

During the morning session, the Subcommittee returned to the issue of the effect of restructuring on borrower's stock. The members adopted language providing that if a land bank or PCA forgives any principal through restructuring, the stock with respect to that loan will be reduced by the same percentage, as long as the borrower retains at least one share of voting stock.

The Subcommittee took up a provision that would require each bank to have on hand collateral to support issuance of consolidated or system-wide notes and bonds having maturities in excess of one year at the time of issuance, and would allow real or personal property acquired in connection with foreclosures to be considered collateral for bonds with at least one year maturity. The members agreed that all obligations should be collateralized regardless of maturity.

The members returned to the question of caps on the volume of loans that could be sold to the secondary market. They considered a Treasury proposal to limit the level to two percent of outstanding real estate debt minus Farmers Home real estate debt in the first year, four percent in the second year, and eight percent in the

third year, beginning with the date of enactment, with no limit after the third year. System representatives suggested that the date when financial assistance begins would be preferable. After some discussion, the members agreed to the date of enactment.

The Subcommittee returned to the issue of borrowing from Banks for Cooperatives. A compromise was adopted that specified that subsidiaries or partnerships would have to be involved in farm or aquatic activities, and that the entity would have to do more business with cooperative members than non-members.

A question was raised concerning an earlier discussion of the secondary market origination fee and annual fee. Staff stated that members had previously discussed an initial fee proposal which required an assessment of up to 50 basis points for certified facilities that wanted to participate in the secondary market, an annual fee of up to 50 points in addition to the initial fee, and an annual fee of up to 35 points, but that the Subcommittee's decision of the fee level was not clear. Senator Daschle proposed and the Subcommittee agreed to an initial fee of 50 basis points with a subsequent annual fee of 35 basis points.

Chairman Boren proposed that the sections on tax exemptions under the secondary market and the mergers sections be deleted to avoid a sequential referral to the Finance Committee. The members agreed.

Chairman Boren proposed an amendment which would clarify current law to require the Farm Credit Administration to ensure that associations, disapproving a merger, would not be charged any assessment at a rate higher than that charged other like associations in the district and that such associations would be provided financial assistance and services on the same basis as other like associations in the district. Chairman Boren noted that this was to ensure that districts could not threaten a local association with unfavorable actions if the association's stockholders did not vote to merge. The amendment was adopted.

Senators Melcher and Karnes proposed an amendment that would merge the district banks for cooperatives and the Central Bank for Cooperatives into one entity with regional offices to ensure that smaller cooperatives are serviced. Senator Melcher explained that the purpose of the amendment was to facilitate larger loans for cooperatives that had export business. Senator Cochran noted that the amendment would be a departure from the policy in the rest of the bill, which would not mandate mergers. The Subcommittee did not adopt the amendment, but noted that cooperatives could merge as long as the majority of stockholders in each affected institution voted to do so.

Chairman Boren then proposed an amendment which provided for reconsideration of association mergers that occurred between December 23, 1985, and the date of enactment of the Farm Credit Act Amendments of 1987. Chairman Boren explained that during this time period, coercion was utilized, in many cases, to force associations to merge and that the mergers were based on a lot of misinformation. Chairman Boren explained that the amendment was taken from S. 1156, S. 1486, and S. 1665, as introduced. Senator Cochran requested that additional time be provided to allow staff

to review the language of the amendment. The Subcommittee agreed and deferred further action on the amendment.

The Subcommittee then agreed to extend permanently current law provisions that allow FICBs to lend to or to discount paper for other financial institutions, and authorize banks for cooperatives to finance certain domestic or foreign entities in connection with import or export activities.

The members returned to the question of Assistance Board membership. Staff suggested that two of the remaining four seats be slotted for the FCS and two for chairmen of district Federal Reserve Banks. Senator Lugar questioned whether System officials should serve on the Board because of a potential conflict of interest and suggested that all four be from the Federal Reserve System. Chairman Boren pointed out that two FCS members would be a small minority. The members debated the issue at length and agreed to revisit the issue in the afternoon.

Senator Cochran sugested that the Subcommittee adopt, prior to the end of the morning session, Chairman Boren's amendment providing for the reconsideration of certain mergers. The Subcommittee adopted the amendment without objection and recessed for the morning.

During the afternoon session, the Subcommittee agreed to the proposal on Assistance Board membership, but specified that one of the FCS members would be chosen from the Bank for Cooperatives and the other would be from an institution that would not be requesting assistance.

The members considered new language for the right of first refusal provision. The new language set forth procedures for both negotiated sales or leases and auctions, and would extend the right to previous owners following restructuring, bankruptcy, or voluntary liquidation. Senator Boschwitz argued that the language would be burdensome to the System, that the right should only be extended for foreclosure and not for voluntary conveyance of property, and that it should not apply to land already held in inventory. Senator Daschle suggested extending it for foreclosure and voluntary liquidation.

System representatives explained that a large majority of voluntary liquidations of land are part of restructuring where the borrower is trying to reduce his/her debt by giving up some property, and therefore is not interested in having it back. Senator Boschwitz was concerned that this proposal might encourage those that owe more on their land than it's worth to turn it over and buy it back. The members agreed to add language to clarify that the System would not be required to provide any financing to the previous owner, and to review the rest of the language at the next meeting.

System representatives presented a proposal on capitalization. The recommended that FCA set minimum capital requirements for institutions to achieve by the end of a five-year period, and allow local boards to determine how the level of capitalization would be achieved.

Treasury representatives offered their recommendations on the capitlization question. They recommended against offering redeemable stock in the future, and stated that the stock guarantee should not be constrained by the five-year life of the Assistance Board, but

rather that the stock guarantee should extend to the originally scheduled maturity date of loans, if the loan were paid off and had not earlier been set aside against a restructuring or writeoff. Further, some form of origination fee should be charged along with the FCA minimum requirements.

Staff proposed to replace future stock purchases with loan origination fees as a way to provide "hard" capital, and at the same time require a $250 share of voting stock for all borrowers. During the five-year period of the stock guarantee under the bill, staff proposed a transition period where existing stock was paid down and a small amount of stock was required for new borrowers. Loan origination fees would be 2.5 percent for land bank borrowers and 1 percent for PCA borrowers. Staff noted that matching the guarantee period with the transition period presented some difficulties.

Chairman Boren proposed increasing the minimum amount of stock to $1000 or 2 percent of the loan, whichever is less, giving FCA the discretion to determine how the remainder of the capital would be raised, and adopting the Treasury proposal on timing the guarantee.

After some discussion, the Subcommittee decided to redraft the language to reflect their agreement that FCA should be empowered to set minumum capital requirements for the various institutions; that the guarantee of outstanding stock would be limited to five years but would extend for the life of the loan; and that there should be minimum voting stock of $1000 or 2 percent. Institutions would have to determine a way to reach the minimum capital standards, and there would be strong encouragement for the imposition of a loan origination fee. At the option of the institution, stock would be transferable among voting members of the institution and could pay dividends.

The Subcommittee reconsidered the issue of how to fund the central reserve account to be established in 1992. An earlier proposal would have assessed institutions based on their capital surplus. Staff proposed that the reserve account board assess and collect premiums for System banks based on the principal outstanding on accruing loans multiplied by 15 basis points, and nonaccruing loans multiplied by 25 points. The Subcommittee extended the protection to stock and decided to accept the proposal, basing the calculation on average loan volume.

October 22, 1987

The Subcommittee met to finish unresolved issues and agreed to meet the following week for a final review of the legislative language.

The subcommittee considered an amendment by Chairman Boren on the powers of the FCA board. The proposal would require the board to be involved in implementing policy and administrative decisions, rather than just the chairman. Chairman Boren noted that he was offering this in lieu of an amendment to expand the size of the board. At Senator Lugar's request the FCA commented against the amendment. Noting that the FCA had a point with regard to its position, Senator Lugar then raised several questions that Chairman Boren responded to. Based on this discussion the mem-

bers agreed to drop the reference to "all" with respect to Board approval of administrative functions and to adopt the amendment. Chairman Boren agreed that if problems developed the Subcommittee would revisit the issue.

Chairman Boren offered an amendment to reduce to 75 percent of the appraised agricultural value the maximum amount that could be loaned on agricultural real estate. Chairman Boren stated that the proposal was similar to the law, prior to the adoption of the 1971 Act, when loans could not exceed 65 percent of the appraised agricultural value. The Chairman explained that there have been many cases where farmers were getting at least 100 percent or more of the real value. Under current law, loans originated by Federal land banks cannot exceed 85 percent of the appraised market value of the real estate security. The members were concerned that this amendment would discourage good borrowers from using the Farm Credit System. Senator Boschwitz expressed opposition to micro-managing FCS lending decisions in this bill. Senator Lugar agreed that this could change the competitive status of the banks that have been doing a good job and result in them developing problems. They agreed to keep current law, but to give FCA the discretion to reduce the limit to 75 percent of market value for institutions whether receiving assistance or not. Senator Daschle noted that the Assistance Board was given similar discretion for institutions receiving assistance in another section.

Chairman Boren then proposed an amendment to prohibit a Farm Credit district board, bank board, or bank officer or employee from removing any director or officer of a production credit association or Federal land bank association. Chairman Boren explained that the Farm Credit Administration's authority to remove directors or officers for cause would be retained under the amendment. The amendment was agreed to by the Subcommittee.

The Subcommittee debated at length a Melcher amendment to establish a secondary market for Farmers Home Administration guaranteed loans, which would allow small bankers to increase liquidity by pooling guaranteed real estate loans. The program would be modeled after a similar Small Business Administration program. At issue was cost: CBO scored the amendment as budget neutral, while OMB scored costs of $165 million in 1988 and $139 million in 1989 to cover timely payments where a borrower is deliquent. After some discussions, Senator Lugar noted that negotiations so far had led to the development of a consensus agreement on the FmHA title and cautioned that further changes could upset that consensus. Nothing that there is a vital necessity to get a farm credit bill passed, Senator Lugar statded that the chance of success is diminished when additional cotroversial provisions are included in the bill. Senators Harkin, Melcher, and Daschle expressed their strong support for the FmHA title. The Subcommittee decided to set aside the issue of the FmHA secondary market for the time being.

Members briefly discussed three Harkin amendments to the FmHA title concerning the definition of debt setaside, shared appreciation, and income release. Senator Boschwitz expressed appreciation to the Senators on the Subcommittee and Committee who

had spent a great deal of time working together developing the FmHA section.

Chairman Boren presented an amendment for Senator McClure. The amendment would allow a borrower turned down by the association to apply for credit in another association in the same district, subject to FCA approval. The amendment was accepted.

Chairman Boren then proposed an amendment on System interest rates. The amendment provided that the interest rate on loans would be based on the marginal cost of money to the System that differential interest rates would have to be approved by the local associations; that there would be a cap on the amount of interest on long-term real estate loans; and that long-term, fixed-rate real estate loans would be available. The amendment also authorized FCA to permit a Federal land bank to charge a higher rate of interest if the FCA Board determined the bank required a higher rate in order to serve remote areas. Senator Boschwitz spoke against this amendment stating he was not in favor of setting interest rates in the statute.

After some discussion, and assurances that the FCA was overseeing the asset-liability matching issue, Chairman Boren withdrew the first part of the amendment. The members agreed to the second provision on differential interest rates, but did not agree to the remainder of the amendment.

The Subcommittee had a lengthy discussion about a proposal of Chairman Boren to prohibit the System from raising interest rates on a fixed rate loan as a result of the loan being reclassified. System representatives stated that adjustments are only made if the cost of borrowing increases or the value of the collateral decreases.

Staff clarified the difference between the rates. Under the differential interest rate system in Louisville, for example, there are five basic classifications of a loan, and the interest rate within each of those classifications varies according to the credit worthiness of the borrower. On top of that, there is a delinquency interest rate. Staff noted that a borrower can be left at a delinquency rate even after he or she becomes current.

Senator Boschwitz spoke against legislative solution for this problem, and Chairman Boren asked the System to provide language to remedy the problem.

The Subcommittee then agreed to a Karnes amendment requiring merged banks for cooperatives to report to Congress on the effect of the merger on small cooperatives.

The members considered Treasury amendments to the secondary market section, but did not adopt any changes before recessing.

October 30, 1987

Chairman Boren informed the Subcommittee that the Justice Department had determined that unless all Assistance Board members were appointed by the President, the bill language would violate the Appointments clause of the Constitution because the Board would exercise significant authority pursuant to Federal law. The Office of Management and Budget recommended that all members be appointed by the President, and noted that this change would

not affect the budget scoring of Assistance Corporation activities, which would remain off-budget.

The Subcommittee adopted a proposal that would permit FCA to continue to allow the use of regulatory accounting principles until 1992. The members clarified that both interest and principal on bonds issued by the Financial Assistance Corporation would be guaranteed; that all System institutions receiving assistance—including associations—would be required to repay principal and interest on bonds; and that any stock issued up to the time of capitalization plans are in place or 9 months, whichever is sooner, would be guaranteed.

The Subcommittee considered but did not adopt a Treasury proposal to amend the secondary market title of the bill to include some provisions from the House bill.

Senator Boschwitz commented that the Subcommittee had earlier agreed to require an outside director on District Boards. However, the transcripts of the previous mark-ups did not specify that outside directors be required for associations. It was clarified that the Subcommittee did intend to require outside directors on association boards also.

A Melcher amendment that would allow a secondary market for FmHA real estate loans was adopted.

Senator Karnes proposed and the Subcommittee agreed that a majority of the Assistance Board seats designated for farmers/ranchers should not be held by System borrowers.

The members debated at length a Harkin proposal to provide income release for operating and household expenses for FmHA borrowers awaiting a restructuring decision. The Subcommittee agreed to restrict the definition of "income security" and debated whether there should be a limit on the amount allowed under an income release. Chairman Boren proposed a limit of $20,000; alternative proposals for lower level caps were also considered based on information provided by the Department of Agriculture representatives. The Subcommittee then agreed to a cap of $18,000. Reacting to concerns raised by Senator Conrad over the definition of "borrower", Senator Lugar suggested a modification to the language in the bill that the Subcommittee agreed to adopt.

By a roll call vote of 9–0, the Subcommittee unanimously agreed to report the bill to the Full Committee.

Full Committee Consideration

November 4, 1987

Chairman Leahy called the Committee to order. Following opening remarks by the members, Senator Boren moved that the Committee report the bill subject to further amendments, and there was no objection.

At Senator Melcher's suggestion, the Committee directed staff to develop an amendment to clarify that repossessed FmHA land that is currently taxed would continue to be taxed, and that such land that is currently held by an Indian reservation and that is not taxed would not be affected.

Senator Breaux offered and the Committee accepted an amendment that would require that not more than one of the two mem-

bers of the Farm Credit Assistance Board appointed by the President shall be a member of the same political party.

Senator Harkin offered an amendment that would require System banks to approve insurers that meet the requisite financial and quality service standards of the individual States, and require that at least three insurers for each type of insurance be made available to member/borrowers. Senator Boren argued for retaining the current competitive bidding process. The amendment was not agreed to by a roll call vote of 6 yeas to 13 nays.

Senator Conrad offered an amendment to the homestead protection provision of the bill that would allow farm out-buildings and up to 10 acres of property to be retained by FmHA borrowers who undergo foreclosure. The amendment was adopted.

Senator Fowler offered an amendment that would permit public and private lenders to place their inventory property in the conservation reserve program. The amendment was modified to clarify that in the case of equal bids, the bidder who met the three-year waiting period requirement would be given preference. The amendment was adopted by voice vote. Senator Fowler offered a second amendment that would impose the current wetlands protection provision and a limited conservation compliance provision on new loans offered by FCS and by any lending institution taking part in the secondary mortgage market. The amendment was not adopted.

Senator Lugar offered an amendment to revise language in the bill to reflect provisions currently found in the Farm Credit Act with respect to the Chairman's authority to determine responsibilities of personnel and to set the schedule of examinations. Following a modification offered by Senator Boren clarifying that the Chairman may not delegate powers specifically reserved to him in the Act without Board approval, the amendment was adopted.

A Heflin amendment was adopted providing for a right of first refusal for issuers of certain FmHA community development notes and obligations and setting forth requirements for determining the price and terms of the purchase.

The Committee agreed to an amendment to expand the language outlining the purpose of the Assistance Board that was offered by Senator Heflin and modified by Senator Melcher.

The members agreed to a Conrad amendment revising the authorization of appropriations for state mediation programs from $30 million for fiscal years 1988 and 1989 to $7.5 million for the next four fiscal years, and a modified Conrad amendment that would require notification of homestead protection rights to borrowers whose property is already in FmHA inventory on the date of enactment of the bill.

Senator Harkin offered an amendment to the shared appreciation arrangements section of the FmHA debt restructuring provision. The portion of the amendment protecting transfer of title to a borrower's spouse upon the death of the borrower was accepted, but the remainder of the amendment was not adopted.

A Fowler amendment was adopted that would require the Assistance Board to report on the effect of certification on System institutions with regard to interest rates and financial solvency.

Chairman Leahy offered an amendment concerning the land inventory policies of the FmHA and the Farm Credit System, noting

that he intended to work out a floor amendment with Senator Lugar on the FmHA determination of surplus and suitable lands. The Leahy amendment included provisions to create a demonstration program to provide an interest rate subsidy, under existing authority, for FmHA eligible borrowers to purchase FCS inventory property. The Committee agreed to the Chairman's amendment without objection.

By a unanimous roll call vote, the Committee agreed to report the bill to the Senate.

ROLLCALL VOTES

In accordance with paragraphs 7(b) and 7(c) of Rule XXVI of the Standing Rules of the Senate, it is announced that—

(1) A motion was offered by Senator Harkin to add a provision that would require System banks to approve insurers that meet the requisite financial and quality service standards of the individual States, and require that at least three insurers for each type of insurance be made available to member/borrowers. The motion was not approved by a vote of 6 to 13 as follows:

YEAS	NAYS
Heflin	Melcher
Harkin	Pryor *
Conrad	Boren
Fowler	Daschle
McConnell	Breaux
Karnes	Lugar
	Dole *
	Helms *
	Cochran
	Boschwitz
	Bond *
	Wilson *
	Leahy

* By proxy

(2) A motion was offered to order reported S. 1665 with an amendment. The motion was approved unanimously.

YEAS

Melcher
Pryor *
Boren
Heflin
Harkin
Conrad
Fowler
Daschle
Breaux *
Lugar
Dole *
Helms *
Cochran
Boschwitz *
McConnell*

Bond *
Wilson *
Karnes
Leahy

* By proxy

SECTION-BY-SECTION ANALYSIS

FARM CREDIT ACT AMENDMENTS OF 1987

TITLE I—FARM CREDIT SYSTEM ASSISTANCE

SECTION 101. FARM CREDIT SYSTEM ASSISTANCE.

A new Title VI is added at the end of the Farm Credit Act of 1971 which creates a Farm Credit System corporation called the "Farm Credit System Assistance Board."

SEC. 6.0. ESTABLISHMENT OF BOARD.

On the 15th day after enactment, the Farm Credit Administration (FCA) shall revoke the charter of the Farm Credit System Capital Corporation and shall charter a new Corporation known as the "Farm Credit System Assistance Board" ("Assistance Board") that shall be a federally chartered instrumentality of the United States.

SEC. 6.1. PURPOSES.

The Assistance Board is to provide financial assistance to borrowers, and to protect the stock of borrowers, of the institutions of the Farm Credit System and to assist in restoring System institutions to economic viability and permitting such institutions to provide credit to farms, ranchers and cooperatives at reasonable and competitive rates.

SEC. 6.2. BOARD OF DIRECTORS.

(a) *Membership.*—The Board of Directors of the Assistance Board shall consist of five members including the Secretary of the Treasury (or employee of the Department designated by the Secretary); the Secretary of Agriculture (or employee of the Department designated by the Secretary); and the Chairman of the Board of Governors of the Federral Reserve System (or a Board member or employee of the Federal Reserve System designated by the Chairman). Also, two members experienced in financial matters shall be appointed by the President by and with the advice and consent of the Senate, and shall not be members of the same political party.

(b) *Chairman.*—The Board of Directors shall elect, on an annual basis, a Chairman from among the members.

(c) *Terms of Office, Succession, and Vacancies.*—Except for the Secretaries of Agriculture and Treasury and the Chairman of the Fedeal Reserve, each member of the Board (the appointed members) shall serve until the Assistance Board is terminated on December 31, 1992. Vacancies shall be filled in the same manner as the vacant position was previously filled.

(d) *Compensation of Board Members.*—Appointed members of the Assistance Board shall receive compensation for the time devoted to meetings and other activities at a daily rate not to exceed the daily rate of compensation prescribed for Level IV of the Executive Schedule. They shall also receive reasonable allowances for neces-

sary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Board, as set forth in Assistance Board bylaws, also not in excess of the maximum set in chapter 57 of title 5, United States Code, for officers and employees of the United States. The Secretaries of Treasury and Agriculture and the Chairman of the Federal Reserve shall receive reasonable allowances for necessary expenses of travel, lodging and subsistence incurred in attending meetings and other activities of the Board.

(e) *Rules and Records.*—The Board of Directors of the Assistance Board shall adopt such rules as it may deem appropriate, and shall keep permanent and accurate records of its proceedings.

(f) *Quorum Required.*—A quorum shall consist of three members. All decisions of the Board shall require an affirmative vote of at least a majority of the members voting.

(g) *Chief Executive Officer.*—A chief executive officer of the Assistance Board shall be selected by the board of directors and shall serve at the pleasure of the Board.

SEC. 6.3. CORPORATE POWERS.

(a) *Corporate Powers.*—The Assistance Board shall be a body corporate that shall have the power to—

(1) operate under its board of directors;

(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

(3) provide for one or more vice presidents, a secretary, a treasurer, and such other officers, employees, and agents, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

(4) adopt a salary scale for officers and employees of the Assistance Board, in accordance with title 5, United States Code;

(5) prescribe by its board of directors its bylaws that shall provide for the manner in which—

(A) its officers, employees, and agents are selected;

(B) its property is acquired, held, and transferred;

(C) its general business is conducted; and

(D) how the privileges granted by law are exercised and enjoyed;

(6) use the information, services, staff and facilities of any executive department or independent agency (with their consent) to assist in carrying out this title;

(7) enter into contracts;

(8) sue and be sued in its corporate name and complain and defend in courts of competent jurisdiction;

(9) acquire, hold, lease, mortgage, or dispose of, real and personal property, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to its business;

(10) obtain insurance against loss;

(11) modify or consent to modification of any contract or agreement to which it is a party or in which it has an interest;

(12) deposit its securities and its current funds with any member bank of the Federal Reserve System or any insured State nonmember bank; and

(13) perform such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with the Act.

(b) *Power to Remove, and Jurisdiction.*—Civil actions involving the Assistance Board shall be deemed to arise under the laws of the United States, and the United States District Court for the District of Columbia shall have original jurisdiction. Such actions may be removed by the Assistance Board to such Federal court.

SEC. 6.4. CERTIFICATION OF ELIGIBILITY TO ISSUE STOCK.

(a) *Eligibility to Request Certification.*—If the book value of stock, participation certificates and other similar equities of a System institution, based on generally accepted accounting principles (GAAP), is less than the par value of the stock or the face value of the certificates or other equities the institution may request the Assistance Board to certify the institution to issue preferred stock to be purchased by the Farm Credit System Financial Assistance Corporation.

(b) *Mandatory Determination of Eligibility.*—If the book value of the stock, participation certificates or similar equities of a System institution, based on GAAP, has declined to 75 percent of the par value of the stock or the face value of the certificates or equities, and the institution has agreed to meet the terms and conditions specified by the Assistance Board, the Assistance Board shall certify the institution as eligible to issue preferred stock unless the Board intends to liquidate such institution. If the determination is to certify such certification shall be effective at the time of such determination.

SEC. 6.5. ASSISTANCE.

(a) *In General.*—The Assistance Board shall assist institutions eligible to receive assistance by one or more of the following:

(1) authorizing the institution to issue preferred stock in amounts necessary to maintain the book value of their borrower stock, participation certificates and smilar equities, at least equal to seventy-five percent of the par value of stock or face value of the certificates or equities (as determined under penalty accepted accounting principles), and be sufficient to strengthen the institution to a point of economic viability;

(2) with respect to the high-cost debt for which the System institution is primarily liable, authorizing the issuance of preferred stock in an amount equal to the premium that would be required by the holder of the debt for the institution to retire such debt at current market value;

(3) authorizing the issuance of preferred stock to facilitate the merger of an institution with other System institutions (if such merger is approved by the stockholders of such merging institutions); and

(4) provide assistance by such other methods as the Assistance Board determines appropriate.

(b) *Definition of High Cost Debt.*—High cost debt, for purposes of the above paragraph, is defined as securities issued before 1986

with a maturity date after 1987 that bear an interest rate in excess of the current market rate.

(c) *Minimum Equity Value.*—The plan for assistance, (authorizing the issuance of preferred stock) shall maintain the value of borrower stock and participation certificates at no less than seventy-five percent of their par or face value as determined under GAAP and shall be in amounts sufficient to result in an economically viable institution capable of delivering credit at reasonable and competitive rates.

SEC. 6.6. SPECIAL POWERS.

(a) *Special Powers Listed.*—In the case of a System institution that requests certification of eligibility to issue preferred stock, the Assistance Board may—

(1) require approval of the business, operating, and investment plans and policies for the institution;

(2) direct the FCA Board (if certain conditions are met), to liquidate the institution or appoint a conservator for the institution, acceptable to the Assistance Board, to evaluate the operations of the institution and report back to the FCA and the Assistance Board on the possibility of restoring the institution to sound financial condition;

(3) request that the FCA Board or the FCA, as appropriate: a) require a merger or consolidation of the institution; b) initiate action to liquidate the institution or to appoint a receiver; or, c) exercise an enforcement power authorized under this Act;

(4) require approval of the terms and conditions of any debt issuances of the institution;

(5) require approval of the policy on credit standards used, and the policy on rates of interest charged on loans, including requiring that the institution set interest rates at levels necessary to ensure that the cost of money to the institution reflects the marginal cost to the institution of borrowing an additional amount of money at the time a new loan is made or, in addition, requiring that loans primarily secured by real estate mortgages shall not exceed 85 percent of the appraised agricultural value of the real estate security, or 75 percent of the current market value of the real estate security, whichever is greater;

(6) require approval of the design of management information and accounting systems, and the use of regulatory accounting practices;

(7) require approval of the hiring policies of the institution; the salary scale for the chief executive officer, or managers, and directors of the institution any change in the management of the institution; and policy decisions regarding continued employment and promotion of management officials referred to above; and

(8) take such other action as the Assistance Board determines may be necessary to establish prudent operating practices at the institution and to put the institution in a sound financial condition.

(b) *Liquidation.*—If the Assistance Board determines that the costs of making assistance available to such institution exceeds the costs of liquidating such institution, the Assistance Board may request the FCA to liquidate such institution.

In the event an institution is to be liquidated, the FCA shall, through the expansion of the territory of an existing System institution, the chartering of a new institution or through some combination thereof, ensure that the credit needs of eligible persons in the territory formerly served by such liquidated institution are adequately met.

The costs of liquidating an FCS institution shall include the following:

(a) the amount by which the par value of borrower stock, participation certificates and other similar equities exceed the book or face value, under GAAP, of such equities at the time of liquidation;

(b) the difference between the outstanding amount of principal due on loans made by the institution (less the allowance for loan losses) and the amount at which such loans can be sold to third parties at the time of liquidation;

(c) the difference between the carrying values for financial reporting purposes, as defined under GAAP, of all other assets of the institution and the amount at which such assets can be sold to third parties at the time of liquidation;

(d) the amount in excess of the carrying values of liabilities of the institution for financial reporting purposes, as defined under GAAP, required to be paid to third parties at the time of liquidation for their agreement to pay or assume such liabilities;

(e) the estimated costs of holding any or all assets and liabilities of the institution until such assets and liabilities are disposed of;

(f) the estimated costs of terminating employees of the institution, including the costs of severance pay and benefit programs that are available to employees upon termination of employment;

(g) the estimated required costs of terminating employee benefit plans of the institution;

(h) the estimated costs of terminating leases and other contractual obligations entered into by the institution;

(i) the estimated costs of administrative, legal and all other actions necessary to dispose of all assets and liabilities of the institution; and

(j) all other costs reasonably expected to be incurred by the liquidated institution or by other System institutions as a result of the liquidation.

(c) *Report.*—On January 1, and July 1, of each year the Assistance Board shall submit a report to Congress on how the assistance provided by this title is lowering interest rates to borrowers and restoring System institutions to financial solvency.

SEC. 6.7. RESTRUCTURING SYSTEM BORROWER DEBT.

(a) *National Special Asset Council.*—A National Special Asset Council ("Council") shall be established by the Assistance Board to

monitor compliance with restructuring requirements of this Act. The Council shall monitor compliance both by System institutions, certified to issue preferred stock, and by special asset groups which are to be established by System districts explained in paragraph (b)).

The Council shall review samples of restructuring determinations made by each special asset group (that a loan will not be restructured). The Council shall review a sufficient sample of such foreclosure determinations in order to assure the Council that such group is adequately carrying its duties. The Council shall make an independent judgment on the merits of the decision to foreclose rather than restructure each loan.

If the Council determines that restructuring the loan will be more advantageous to System institutions than foreclosure (or other collection procedures) the Council shall prepare a restructuring plan and the institution that originated the loan will have to implement that plan.

If the Council determines that any special asset group is not in substantial compliance with these requirements, the Council shall notify the group of the determination and take other appropriate actions.

(b) *Special Asset Groups.*—If a System institution in a district is certified as eligible to issue preferred stock, the district board must establish a "special asset group" within 30 days of such certification to review each determination by such institution that a loan will not be restructured.

If a special asset group determines that a loan should be restructured, the group shall prescribe a restructuring plan that the System institution must follow.

A report regarding loans designated by a special asset group for liquidation through foreclosure (or other means) shall be submitted to the Council for evaluation before any such action is taken. If the special asset group has not received a response from the Council within 30 days of submitting such report, the special asset group's determination shall be considered final.

(c) *Restructuring Standards.*—In determining whether a loan will be restructured, the Council, each special asset group, and each System institution (certified to issue preferred stock) shall consider: (1) whether the cost of restructuring the loan to the System institution is equal to or less than the cost of foreclosure (explained below); (2) whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations; (3) whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration; and (4) whether the borrower is capable of working out existing financial difficulties, reestablishing a viable operation, and repaying the loan on a rescheduled basis.

The term "cost of foreclosure" includes (1) the difference between the outstanding amount of principal due on a loan made by an institution and the value of the collateral used to secure the loan; (2) the estimated cost of maintaining a loan as a nonperforming asset; (3) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of

the foreclosure; (4) the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and (5) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(d) *Requirements for Restructuring Existing and New Loans.*—Within 9 months after a System institution is certified to issue preferred stock, each such System institution shall review each loan that has been previously restructured and that is in nonaccrual status on the date of certification and determine whether or not the loan will be restructured.

For loans which become nonaccrual after the institution is certified, the System institution shall determine within 6 months after any such loan is placed in nonaccrual status whether the loan will be restructured.

The term "restructure" and "restructuring" includes: (1) forbearance actions on a loan that result in rescheduling, renewal, settlement of debt or other similar actions; (2) deferral or forgiveness of payment of all or part of the principal or interest; (3) extension of the term of the loan through reamortization; and (4) refraining from exercising a right with respect to a loan that is granted by the loan agreement or by law but does not include changes in normal loan servicing actions.

(e) *Effect of Restructuring on Borrower Stock.*—If a Federal land bank (FLB) or a production credit association (PCA) forgives any of the principal outstanding on a loan made to any borrower, the Federal land bank association (FLBA) or PCA (of which the borrower is a member and stockholder), shall cancel borrower stock by the same percentage as the loan principal is reduced, and may cancel the same dollar amount of borrower stock. However, the borrower shall be entitled to retain one share of stock in order to maintain membership and a voting interest in the association.

(f) *Application.*—These restructuring provisions do not apply to the Central Bank for Cooperatives, a bank for cooperatives, or any System institution that is not certified to issue preferred stock.

SEC. 6.8. ADMINISTRATION.

(a) *Expenses.*—The administrative expenses of the Assistance Board, including the expenses of the National Special Asset Council, shall be paid for by the FCS Financial Assistance Corporation from funds in the Assistance Fund, described later, except that the total administrative expenses of the Assistance Board shall not exceed, in fiscal year 1988, $2,000,000. The expenses in each subsequent fiscal year shall not exceed an amount equal to the ceiling for the prior fiscal year, increased by 5 percent.

(b) *Interim Funding.*—Prior to the availability of funding from the Assistance Fund, the Assistance Board may use the current revolving fund. Such amounts used shall be repaid to the revolving fund out of the Assistance Fund within the same fiscal year that such funds were received by the Assistance Board.

(c) *Access to FCA Documents.*—The Assistance Board shall have access to all reports of examination and supervisory documents of the FCA as necessary to carry out the special powers of the Board

regarding institutions certified to issue preferred stock except that FCA conditions may be imposed as are necessary and appropriate to protect the confidentiality of the documents and materials.

SEC. 6.9. LIMITATION OF POWERS.

The powers of the Assistance Board shall not include the management, administration, or disposition of any loans or other assets owned by other System institutions, or providing technical assistance or other related services to other System institutions in connection with the administration of loans owned by such other institutions, unless specifically so provided.

SEC. 6.10. SUCCESSION OF THE CORPORATION.

(a) *Liabilities.*—On the issuance by the FCA of the charter for the Assistance Board, the Assistance Board shall succeed to the assets of and assume all debts, obligations, contracts, and other liabilities of the current FCS Capital Corporation, whether or not reflected or reserved against on balance sheets, books of account, or records of the predecessor corporation.

(b) *Contracts.*—The existing contractual obligations, security instruments, and title instruments of the predecessor corporation shall, by operation of law and without any further action by the Farm Credit Administration, the predecessor corporation, or any court, become and be converted into obligations, entitlements, and instruments of the Assistance Board.

(c) *Assessments.*—Not later than 15 days after the issuance of the charter of the Assistance Board assessments (imposed by the predecessor Capital Corporation on any System institution), less funds used for operating expenses of the predecessor corporation, are rescinded. Any funds obtained by the predecessor corporation through such assessments shall be refunded by retiring class "D" stock owned by those institutions in the Capital Corporation.

(d) *Surplus Funds.*—To the extent that after reversing the assessments of the former Capital Corporation there remain surplus funds, the Assistance Board shall distribute such surplus funds among the System institutions that contributed funds to the predecessor Corporation on the basis of the relative amount of funds so contributed by each institution.

(e) *Preservation Agreements.*—In consideration of the benefits, both direct and indirect, received by each System bank and association, individually and collectively, under this Act, any amount paid by a System bank to another System bank under the Federal Land Bank Capital Preservation Agreement, and the 37-Bank Capital Preservation Agreement, shall be retained by the recipient bank, and any obligation accrued by a System bank under such agreements on or before September 30, 1986, but not paid on or before the date of enactment of the Farm Credit Act Amendments of 1987, shall be paid in accordance with such agreements by such contributing bank in the amounts as stated in the 1986 audited financial reports of such banks, notwithstanding any reservation, qualification or condition expressed by the System bank accruing or reporting the obligation.

SEC. 6.11. REGULATIONS.

The Assistance Board may issue such regulations as the Board considers necessary or appropriate to carry out this subtitle and the Board need not follow procedures set forth in chapter 5, of title 5, of the United States Code. The Assistance Board shall not be subject to regulation by the FCA under its general regulatory powers. The Assistance Board shall not require an audit of a System institution that would be duplicative of an audit that is otherwise conducted.

SEC. 6.12. TERMINATION.

The Assistance Board shall terminate on December 31, 1992.

SEC. 6.13. TRANSITIONAL PROVISIONS.

The powers of the Assistance Board shall be exercised by the FCA Board until the issuance of the charter of the Assistance Board or such later date, not to exceed 30 days thereafter, as may be requested by the Assistance Board.

When exercising these powers, however, the FCA Board may certify the issuance of preferred stock by System institutions only to the extent of funds available in the revolving fund (established under current law).

Any such institution that receives this assistance from the FCA (during the interim period) shall issue preferred stock to the Financial Assistance Corporation in an amount equal to the amount of such assistance.

The Financial Assistance Corporation shall pay to the FCA the full amount of all financial assistance provided by the FCA from all, or part of, the proceeds from the sale of the first issue of obligations by the Financial Assistance Corporation issued in accordance with the section on debt obligations (section 6.26).

Subtitle B—Financial Assistance Corporation

SEC. 6.20. ESTABLISHMENT OF CORPORATION.

Not later than 5 days after enactment, the FCA shall charter the FCS Financial Assistance Corporation (referred to as the "Financial Assistance Corporation") which shall be a "sibling" corporation of the FCS Funding Corporation and be a federally chartered instrumentality of the United States. The FCA shall amend the charter of the Funding Corporation to the extent necessary or appropriate.

SEC. 6.21. PURPOSE.

The purpose of the Financial Assistance Corporation is to provide capital to FCS institutions that are experiencing financial difficulty.

SEC. 6.22. BOARD OF DIRECTORS.

The Board of Directors shall consist of the Board of Directors of the FCS Funding Corporation. The Board shall elect, on an annual basis, a Chairman from among the members of the Board. Members of the board of directors shall receive compensation for the time devoted to meetings and other activities of the Board and reasonable allowances for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Board in amounts not in excess of levels set by the FCA Board.

The Board of Directors shall adopt such rules as it may deem appropriate for the transaction of its business and shall keep permanent and accurate records and minutes of its acts and proceedings.

No business may be conducted at a meeting of the Financial Assistance Corporation unless a quorum is present. A vote to approve an action requires a majority vote of the members of voting.

A chief executive officer shall be selected by the Board of Directors of the Financial Assistance Corporation and shall serve at the pleasure of the Corporation.

SEC. 6.23. STOCK.

The Financial Assistance Corporation shall issue stock with a par value of $5.00.

SEC. 6.24. CORPORATE POWERS.

(a) The Financial Assistance Corporation shall have the power under its charter to—

(1) operate under the direction of its board of directors;

(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

(3) provide for such officers, employees, and agents, including joint employees with the Funding Corporation as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

(4) adopt a salary scale for officers and employees of the Financial Assistance Corporation;

(5) prescribe by its board of directors the bylaws which shall provide for the manner in which its officers, employees, and agents are selected; its property is acquired, held, and transferred; its general business is conducted; and the privileges granted by law are exercised and enjoyed;

(6) enter into contracts;

(7) sue and be sued in its corporate name and complain and defend in courts of competent jurisdiction;

(8) acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property, and guarantee, sell, or exchange any securities or obligations, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to its business;

(9) obtain insurance against loss;

(10) modify or consent to modification of any contract;

(11) borrow from any commercial bank on its own individual responsibility and on such terms and conditions as it may determine with the approval of the FCA;

(12) deposit its securities and its current funds with any member bank of the Federal Reserve System or any insured State nonmember bank and pay fees therefor and receive interest thereon as may be agreed; and

(13) perform such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with its charter and this subtitle.

(b) *Power to Remove, and Jurisdiction.*—Any civil action, suit, or proceeding to which the Financial Assistance Corporation shall be a party, shall be deemed to arise under the laws of the United

States, and the United States District Court for the District of Columbia shall have original jurisdiction over such. The Financial Assistance Corporation may, without bond or security, remove any such action, suit or proceeding from a State court to the United States District Court for the District of Columbia.

SEC. 6.25. ACCOUNTS.

(a) *Farm Credit Assistance Fund.*—The Financial Assistance Corporation shall establish an account called the Farm Credit Assistance Fund (referred to as the "Assistance Fund") which shall be available to the Financial Assistance Corporation as a revolving fund.

This Assistance Fund shall be funded through the issuance of the 15 year debt obligations (as explained in the next section), through payments from the Secretary of Treasury and also through payments of interest by System institutions.

Moneys in the Assistance Fund not needed for current operations shall be invested in direct obligations of the United States or obligations guaranteed by the United States.

(b) *Financial Assistance Corporation Trust Fund.*—The Financial Assistance Corporation shall establish an account called the Financial Assistance Corporation Trust Fund (referred to as the "Trust Fund") that shall consist of securities of the United States Treasury purchased by the Financial Assistance Corporation with the funds received from the one-time assessments (the one-time stock purchase) made against System institutions under section 6.29, as described later.

SEC. 6.26. DEBT OBLIGATIONS.

(a) *Issuance.*—During the period beginning 61 days after enactment and ending September 30, 1992, the Financial Assistance Corporation may issue uncollateralized bonds, and similar obligations, guaranteed as to the timely payment of principal and interest by the Treasury, with annual coupon payments and a maturity period of 15 years in an aggregate amount not to exceed $4 billion in two phases.

The first phase if for $2.8 billion. Beginning January 1, 1989, an *additional* amount, not to exceed $1.2 billion can be issued if the full $2.8 billion in obligations has been issued and if the Assistance Board determines the additional $1.2 billion, or part of it, is needed. In that event a report must be sent to Congress, at least 90 days prior to the issuance of any of those additional debt obligations.

(b) *Conditions.*—the 15 year debt obligations shall be in such forms and denominations, bear such rates of interest, be subject to such terms and conditions, be issued in such manner, and sold at such prices as may be prescribed by the Financial Assistance Corporation.

(c) *Interest Payments.*—During the first 10-year period beginning on the date of issuance of an obligation, the Financial Assistance Corporation shall be responsible, without recourse to System institutions, for the payment of the annual interest charges on debt obligations as follows:

During the first 5 years of such 10-year period, the Financial Assistance Corporation shall pay the entire interest due on the obligation.

During the second 5 years, the Financial Assistance Corporation shall pay 50 percent of the interest due and FCS insitutions shall pay the other 50 percent of the interest. However, System institutions shall pay an additional 10 percent of the interest expense for each 1 percent that the unallocated retained earnings of the System, under generally accepted accounting principles, exceed 5 percent of net assets for the preceeding year.

Each System institution shall pay a proportionate share of the interest due (the 50 percent, or greater than 50 percent, amount) according to the amount of the performing loan volume of the institution in relation to the total performing loan volume of the System.

After the end of the first 10-year period, System institutions shall pay the entire amount of interest due on the obligations, based on the performing loan volume in the proportion described above.

(d) *Refinancing and Payment of Principal.*—Upon maturity of these 15-year obligations, the obligation shall be repaid by the Financial Assistance Corporation. So that the Corporation can repay those obligations each System institution that issued preferred stock shall pay to the Financial Assistance Corporation, prior to the maturity of such obligation, the dollar value of such outstanding preferred stock at par value. (To make these payments institutions are authorized to refinance these obligations without a collateral requirement and without any guarantee.)

The payment of the principal and interest on the refinanced obligations shall be solely assumed by each System institution issuing such debt and shall not be paid, in any manner, by institutions not certified to issue preferred stock. Each system institution shall be liable only for it own debt.

If a System institution defaults on the payment of interest due during the first 15 years after obligations are issued, the Financial Assistance Corporation shall pay the amount of the interest due by the System institution out of the Trust Fund, and shall attempt to recover the amount of the interest due the defaulting System institution to repay the Trust Fund.

If the Corporation has not recovered the full amount of interest due from the defaulting System institution by the end of the 12-month period beginning on the date of the default, all uncollected interest due from the defaulting institution shall be paid out of the Reserve Account, to the Trust Fund, set up in section 4.9A. If the Reserve Account is insufficient, the amount still due shall be added to the amount of interest otherwise due by remaining System institutions. Each remaining System institution shall pay a proportionate share of this uncollected interest based on the amount of performing loan volume of the institution is relation to the total performing loan volume of the System. Such amounts shall be paid to the Trust Fund.

Not later than 90 days prior to the maturity of any of the 15 year obligations, the Financial Assistance Corporation shall com-

plete an evaluation of the general financial condition of each System institution that issued preferred stock to determine whether such System institution will be able to redeem such stock at par value on the maturity of the obligation and continue to remain a viable institution capable of providing credit to eligible borrowers at equitable and competitive interest rates.

A copy of this evaluation shall be furnished to the Secretary of the Treasury and the Congress.

If the Financial Assistance Corporation determines that a System institution will be unable to redeem stock at par value in a timely manner (either directly or through the use of funds obtained by such institution through the issuance of uncollateralized and nonguaranteed obligations), and remain a viable and competitive institution, the Financial Assistance Corporation shall withdraw funds from the Trust Fund in an amount equal to the par value of the such preferred stock to enable the institution to repay the stock. At the same time the Financial Assistance Corporation (FAC) shall transfer to the Reserve Account an equal amount of preferred stock of such institution.

To the extent the Trust Fund is insufficient to enable the FAC to pay the full principal of the maturing obligation, the Reserve Account shall be used by the Reserve Account Board to purchase the preferred stock issued by such institution to enable the FAC to pay the principal of the maturing obligation. If the Reserve Account is insufficient, the Treasury shall make up the difference by purchasing preferred stock issued by the institution. The Secretary of the Treasury may use, as a public debt transaction, the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code. Any preferred stock transferred to, or purchased by, the Reserve Account under these provisions, shall be retired by the issuing institution at such times and under such conditions as are agreed to between the Reserve Account and such institution.

Where the Secretary of the Treasury is required to make a payment of interest, because of an interest default, to the Financial Assistance Corporation, the Secretary shall recover the amount of such payments from such defaulting institution. If the full amount is not recovered in 12 months the uncollected amount shall be paid to the Secretary out of the Reserve Account established under section 4.9A.

In each instance in which the Secretary is required to purchase preferred stock because of a default on principal payments, the Reserve Account Board shall use funds deposited in the Reserve Account to repurchase, at par value, such stock from the Secretary of the Treasury as funds become available for such repurchase.

SEC. 6.27. PREFERRED STOCK.

(a) *Issuance.*—Each System institution that is certified as eligible to issue preferred stock may issue a special class of preferred stock for which dividends shall not be payable and no voting rights will exist. Also, preferred stock so issued shall be retired at the time the debt obligation it is associated will is retired. Except that the stock shall be issued under such terms and conditions as will enable the Secretary of the Treasury (with respect to any such stock the Secretary purchases) to establish for such stock, a stated

dividend rate equal to the current market yield on outstanding, marketable obligations of the United States with maturity of 30 years, and a premium to reflect the cost of capital for institutions in financial distress.

The Financial Assistance Corporation shall purchase shares of this stock issued by certified System institutions to the extent that the issuance of such stock is approved by the Assistance Board.

SEC. 6.28. PAYMENTS.

(a) *Payments.*—The Secretary of the Treasury shall reimburse the Financial Assistance Corporation for any amounts which that corporation has paid in interest charges (under section 6.26(c)) and the Secretary shall pay FAC any amounts due from the Secretary to such Corporation under section 6.26(c).

(b) *Limit on Liability.*—The first $2,000,000,000 of payments made by the Secretary of the Treasury to the Assistance Fund shall not be subject to repayment by institutions of the Farm Credit System.

Any amounts paid into the Assistance Fund by the Secretary of the Treasury in excess of $2,000,000,000 shall be repaid by System institutions in accordance with a schedule to be established by the FCA Board.

Each System institution shall pay a proportionate share of such interest due according to the amount of the performing loan volume of the institution (based on a year-end financial statement) in relation to the total performing loan volume of the System.

(c) *Authorization of Appropriations.*—There is authorized to be appropriated to the Secretary of the Treasury such sums on an annual basis as may be necessary.

SEC. 6.29. ONE-TIME STOCK PURCHASE.

For the purpose of obtaining funds for the Trust Fund, each System institution shall purchase from the Financial Assistance Corporation stock issued by that corporation equal to the amount by which the unallocated retained earnings of the institution (after taking into account any funds received from reversing the assessments of the Capital Corporation) exceeds, in the case of a System bank, 5 percent of assets, or in the case of a PCA or a FLBA, 13 percent of assets. These unallocated retained earnings and assets shall be computed in accordance with GAAP on the basis of the financial statement of the System institution on December 31, 1986.

Not later than 15 days after notifying institutions of the amounts to be provided by the assessment reversals, the Financial Assistance Corporation shall notify each System institution of the amount of the one-time stock purchase. Not later than 15 days after that notification each System institution shall buy such stock.

Notwithstanding any other provision of law, the United States district court for the District of Columbia shall have exclusive jurisdiction over any action brought under or arising out of this section. No suit can be filed challenging these required stock purchases unless and until the stock has been purchased and paid for in full.

SEC. 6.30. TERMINATION.

The Financial Assistance Corporation shall terminate on the expiration of all debt obligations issued under section 6.26.

SECTION 102. REVOLVING FUND.

Section 4.0 of the Farm Credit Act of 1971 (12 U.S.C. 2151) is amended.

SEC. 4.0. REVOLVING FUND.

The revolving fund (as it existed before the amendment made by section 102) shall be available to the FCA (during the period beginning on the date of enactment and ending on the date the Assistance Board is appointed) to advance funds to System institutions that are in need of financial assistance.

Also, during the period beginning January 1, 1993, the revolving fund may be used by the FCA to advance funds to the Reserve Account established under section 4.9A if the Account does not have sufficient funds to carry out the purposes of that Reserve Account. Any such funds so advanced from the revolving fund to a System institution shall be repaid under terms set by the FCA.

SECTION 103. UNSAFE OR UNSOUND PRACTICES.

Paragraph (4) of section 5.35 (12 U.S.C. 2271(4)) is amended to allow FCA to use its cease and desist powers to enforce terms and conditions imposed by the Assistance Board on receiving institutions certified to issue preferred stock.

Thus, the term "unsafe or unsound practice" shall have the meaning given to it by the FCA (by regulation, rule, or order) and during the period beginning on the date of enactment and ending December 31, 1992, the term "unsafe or unsound practice" shall mean any noncompliance by a System institution (as determined by the Assistance Board in consultation with the FCA) with any term or condition imposed on the institution by the Assistance Board in connection with the exercise of its special powers.

SECTION 104. FINANCIAL REPORT.

During the period beginning September 30, 2001, and ending December 31, 2001, the FCA shall review and evaluate the financial condition of the System and report to the Secretary of the Treasury and the appropriate committees of Congress on the general financial condition of each System institution, the total outstanding principal of debt obligations issued by the Financial Assistance Corporation, the ability of each System institution to retire, at par value, the preferred stock it issued.

SECTION 105. REGULATORY ACCOUNTING PROCEDURES.

Institutions, subject to FCA regulations, may use regulatory accounting practices (instead of GAAP) until December 31, 1992.

Preferred stock issued to assist System institutions are to both be subordinated and impaired prior to other stock or equities.

TITLE II--RESTRUCTURING THE FARM CREDIT SYSTEM

SECTION 201. FARM CREDIT ADMINISTRATION BOARD.

Section 5.8(c) (12 U.S.C. 2242) is amended to require that the Farm Credit Administration Board adopt such rules as it deems appropriate for the transaction of business by the Board. Also, the

Board shall keep permanent and accurate records of the actions proceedings of the Board.

Section 5.10(a) (12 U.S.C. 2244(a)) is amended to provide that the Chairman of the Board shall be the chief executive officer of the FCA. In carrying out the responsibilities of the chief executive officer, the Chairman shall be responsible for directing the implementing of policies and regulations adopted by the Board and, after consultation with the Board, the execution of the administrative functions and duties of the Farm Credit Administration. Also in carrying out policies, as directed by the Board, the Chairman shall act as spokesperson for the Board and represent the Board and the FCA in their official relations within the Government.

Under policies adopted by the Board, the Chairman shall consult with the Secretary of the Treasury concerning the exercise, by the System, of the power to merge similar banks. Also, the Chairman shall consult with the Board of Governors of the Federal Reserve System concerning the effect of System lending activities on national monetary policy and the Secretary of Agriculture concerning the effect of System policies on farmers, ranchers, and on the agricultural economy.

Section 5.11 (12 U.S.C. 2245) is rewritten to provide that the Chairman of the FCA Board, in carrying out the powers and duties vested in the Chairman by this Act, and subsequent Acts, shall be governed by policies of the Board and by such regulatory decisions, findings and determinations as the Board may by law be authorized to make.

The appointment by the Chairman of the heads of major administrative divisions under the Board shall be subject to the approval of the Board. Personnel employed full-time in the immediate offices of Board members shall be appointed by each Board member.

The officers and employees of the agency shall be subject to the Ethics in Government Act of 1978 (2 U.S.C. 701) and shall be considered officers or employees of the United States for certain purposes (related to criminal matters concerning bribery of Federal officials and the disqualification of former Federal officers from certain activities).

The power of the Chairman as chief executive officer may be exercised and performed by the Chairman through such other officers and employees of the Administration as the Chairman shall designate, subject to Board approval.

The operations of the FCA and the salaries of members of the Board and employees of the Administration, shall be funded and paid for out of the FCA operating expenses fund described later.

Section 5.17(a) (12 U.S.C. 2251(a)) is amended by striking out the last sentence and instead providing that the Board may require two or more district banks of the Farm Credit System to merge if the Board, after consultation with the respective boards of directors of the affected banks, determines that one of such banks has failed to meet its outstanding obligations.

Section 2.15 (12 U.S.C. 2096) is amended by adding at the end a new subsection which provides that the FCA Board may permit a PCA that is located in a district in which there are no more than three such associations to provide credit and technical assistance to any borrower who is denied such assistance by a PCA that has an

adjoining service territory and is located in the same district, if the Board determines that one of the PCAs in the district is unduly restrictive in the application of credit standards.

If the FCA Board approves such extension of assistance the association shall approve or deny the application for credit within 90 days after the receipt of the applications from the borrower.

SEC. 202. FARM CREDIT ADMINISTRATION ORGANIZATION.

Section 5.15 (12 U.S.C. 2249) is amended to provide for an operating expenses fund for the FCA.

SEC. 5.15. FARM CREDIT ADMINISTRATION OPERATING EXPENSES FUND.

(a) *Determinations.*—An operating expenses fund is created in section 5.15 (12 U.S.C. 2249) called the Farm Credit Administration Operating Expenses Fund. Prior to the first day of each fiscal year, the FCA shall determine the cost of administering this Act for the subsequent fiscal year and the amount of assessments that are required to pay such administrative expenses, taking into consideration the funds contained in the Administrative Expense Account.

On the basis of these determinations the FCA shall apportion the amount of such assessments among the System institutions on a basis that is determined to be equitable by the FCA and shall assess and collect such apportioned amounts from time to time during the fiscal year as deemed necessary by the FCA.

The FCA shall also determine the amount of assessments needed to pay the direct costs of the supervision and examination of the Mortgage Corporation regarding its Secondary Market activities. The FCA uses and collect from the Mortgage Corporation needed funds for such FCA regulation.

The amounts so collected shall be deposited in the FCA Administrative Expense Account, that shall be maintained in the Treasury of the United States and shall be available, without regard to the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 note), or any other law, to pay the expenses of the Farm Credit Administration. The funds contained in the Expense Account shall not be construed to be Government funds or appropriated monies.

On request of the FCA the Secretary of the Treasury shall invest and reinvest such amounts contained in the Administrative Expense Account as, in the detemination of the FCA are in excess of the amounts necessary for its current expenses. All income earned from such investments and reinvestments shall be deposited in the Administrative Expense Account.

SEC. 5.19(a). EXAMINATION OF FEDERAL LAND BANK ASSOCIATIONS.

Section 5.19(a) (12 U.S.C. 2253 (a)) is amended to provide that each FLBA shall be examined by FCA examiners at such times as the FCA Board may determine, but each such association shall be examined at least once every 5 years.

SEC. 5.38. POWER TO REMOVE DIRECTORS AND OFFICERS.

A new section is added which provided that a farm credit district board, bank board, or bank officer or employee shall not remove any director or officer of any production credit association or Federal land bank association.

SECTION 203. FARM CREDIT SYSTEM RESERVES.

Section 4.9A (12 U.S.C. 2161) is amended.

SEC. 4.9A. FARM CREDIT SYSTEM CENTRAL RESERVE ACCOUNT.

The current Central Reserve section 4.9A, is changed to provide that the FCA Board shall, starting January 1, 1992, establish the Farm Credit System Central Reserve Account (the "Reserve Account") which shall be held in the form of securities for use by the Reserve Account Board.

A Reserve Account Board shall be established which shall consist of the members of the FCA Board except that the Reserve Account Board shall be chaired by any Board member other than the chairman of the FCA Board.

The Reserve Account Board shall assess premiums from System institutions as are necessary except than an assessment from any System bank shall not exceed the sum of the average principal outstanding during the prior calendar year on loans made by such bank that are in accrual status, multiplied by 0.0015, and the average principal outstanding during the prior calendar year on loans made by such bank that are in nonaccrual status, multiplied by 0.0025.

The principal outstanding on loans, in accrual and nonaccrual status, made by a FICB shall be determined based on loans in accrual and nonaccrual status made by: (1) the PCAs in the district in which such bank is located; (2) by any "other financial institution" (bank, company, institution, corporation, union, or association) that is able to make such loans because such entity is receiving, or has received, funds provided through the FICB, and; (3) by such FICB, itself.

The Reserve Account shall be used by the Reserve Account Board to provide assistance to System institutions as needed to satisfy notes, bonds, of other individually issued obligations that issuing System institutions are unable to satisfy independently and will be used to ensure the retirement of borrower stock at par value and participation certificates at face value (as provided for in subsection 4.9B(c)(2)) to the extent that any System institution is unable to retire such equities at par value, except that such assistance shall not be provided for stock issued after the date on which the capitalization plan is approved by the FCA. Also the Reserve Account is available to satisfy System institution defaults as set forth in Section 6.26.

If the Reserve Account Board is called on to make payment of principal or interest, or both, to satisfy consolidated or System-wide obligations to the extent that a participating institution is unable to make payments of principal or interest for which the institution is primarily liable, and if the amount due exceeds the funds available in the Reserve Account; the Reserve Account Board shall make a partial payment on the obligation to the extent of the funds available in the Assistance Fund and each System institution shall be jointly and severally liable for the payment of the additional amounts necessary to retire that obligation.

The FCA shall issue such regulations to carry out these provisions including regulations concerning the basis on which System institutions are to be assessed premiums to be paid to the Reserve

Account; the method by which premiums shall be collected; and the maximum amount of funds that may be held by the Reserve Account at any one time.

The FCA shall issue these regulations in proposed form not later than October 1, 1990, and in final form not later than July 1, 1991. The final regulations shall be presented to Congress not later than 30 days prior to publication.

SECTION 204. PROTECTION OF BORROWER STOCK.

Part A of title IV (12 U.S.C. 2151 et seq.) is amended by adding a new section.

SEC. 4.9B. PROTECTION OF BORROWER STOCK, PARTICIPATION CERTIFICATES, AND SIMILAR EQUITIES.

With respect to any loan made by a System institution to a borrower that is secured by stock, participation certificates or other similar equities (held by a person other than a System institution) that is repaid in full—

(1) in the case of stock, the stock shall be retired and paid for at par value by the lending institution; and

(2) in the case of participation certificates or other equities, the certificates or equities shall be retired and paid for at the face value by the lending institution.

This section shall apply to any borrower stock or participation certificates: (1) that were frozen, impaired or retired at less than par value by an association after January 1, 1983 (in connection with the liquidation of an association); (2) that are outstanding on the date of enactment of this section; *or* (3) that are required to be purchased, and are purchased, as a condition of obtaining a loan made after the date of enactment of this section, but prior to the sooner of the date of implementation of the capitalization requirements described later in this analysis or nine months after enactment.

If a System institution is unable to retire any borrower stock, participation certificate or similar equity described in this section such institution shall apply to the Assistance Board for certification of eligibility to issue preferred stock and the Assistance Board shall so certify the issuance of stock by such institution in an amount sufficient to assure redemption of such equities.

SEC. 205. MERGER OF SYSTEM INSTITUTIONS—TITLE VII.

The Act is amended by adding a new title VII.

SEC. 7.0. POWER TO MERGE.

Two or more banks within a district may merge into a single "merged bank" if the plan of merger is approved by the FCA Board; the boards of director of the banks involved; and a majority of the stockholders (or subscribers to the guaranty funds) present and voting or voting by proxy of each merging bank at a meeting of stockholders of each bank.

In the case of a Bank for Cooperatives, a majority of the total equity interests in each merging bank (including allocated, surplus and reserves) held by those stockholders or subscribers to the guaranty funds of the bank voting.

SEC. 7.1. BOARD OF DIRECTORS FOR THE DISTRICT.

After a merger of banks in a district, the district board of directors shall continue to be composed of seven members.

The FCA shall issue regulations to ensure the fair and equitable representation of the associations of each of the merging banks on the initial board of directors of the merged bank.

SEC. 7.2. POWERS OF MERGED BANKS.

Generally, a merged bank shall have all of the powers granted to, and shall be subject to all of the obligations imposed on, any of the constituent entities. However, FCA regulations shall determine how the powers and obligations of the banks that form the merged bank are consolidated and reconciled in the merged bank.

SEC. 7.3. CAPITAL STOCK.

(a) *Plan of Merger.*—The number of shares of capital stock issued by a merged bank to stockholders and other owners of any institution involved in the merger, and the rights and privileges of such shares (including voting power, redemption rights, preferences on liquidation, and the right to dividends) shall be determined by the plan of merger adopted by the banks involved, and shall be consistent with the regulations issued by the FCA.

(b) *Board of Directors.*—Subject to the above paragraph, the number of shares of capital stock issued by a merged bank, and the rights and privileges thereof, shall be determined by the board of directors of the merged bank established under this subtitle.

(c) *Voting Stock.*—However, the voting stock of a merged bank shall be held only by associations or cooperatives that were immediately prior to the merger, entitled to hold voting ranchers, or producers or harvesters of aquatic products that are or were, immediately prior to the merger, direct borrowers from the merged bank or one of the banks that comprise the merged bank.

SEC. 7.4. EARNINGS, RESERVES, AND DISTRIBUTIONS.

The board of directors of a merged bank shall determine the use of net earnings after payment of operating expenses except that net earnings shall first be applied to restore the value of any capital stock whose value is impaired and then used for additions to an allocated reserve account; additions to an unallocated reserve account; payment of a dividend on capital stock; or payment of patronage refunds in cash or in stock or other notices of allocation.

SEC. 7.5. REPORTS BY MERGED BANKS FOR COOPERATIVES.

When two or more banks for cooperatives merge, the resulting bank shall, not later than December 31 of each year of the succeeding 5 years following the date of the merger, file an annual report with the Farm Credit Administration that—

(1) analyzes the effect of the merger;

(2) provides a breakdown of the loans by the size of the cooperatives; and

(3) describes the adequacy of credit and other assistance services provided to smaller cooperatives.

Subtitle B—Mergers, Transfers of Assets, and Powers of Associations Within a District

Chapter 1—Transfers by Production Credit Associations to Banks

SEC. 7.6. TRANSFER OF LOAN-RELATED ASSETS AND LENDING AUTHORITY.

A production credit association (PCA) may assign its authority to make loans to the Federal intermediate credit bank (FICB) in the district, or to a merged bank having the FICB as one of its constituents, if the assignment is approved by the FCA Board; the board of directors of both institutions; and a majority of the stockholders of the association present and voting, or voting by written proxy, at a duly authorized meeting.

The PCA may transfer part or all of the association loan portfolio or other assets, or both, to the FICB for consideration as may be agreed. After such a transfer the FICB bank (or the merged bank) shall possess the direct loan authority formerly possessed by the transferring PCA.

Chapter 2—Transfers by Federal Land Banks to Federal Land Bank Association

SEC. 7.7. TRANSFER OF LENDING AUTHORITY.

A Federal land bank (FLB) or a merged bank having a FLB as one of its constitutions, may assign to a Federal land bank association (FLBA), the authority of the transferring bank to make and participate in long-term real estate mortgage loans if the assignment is approved by the FCA Board; the boards of directors of both institutions; and a majority of the stockholders of the bank and of the association.

After such a transfer that the FLBA shall possess all of the direct long-term real estate mortgage loan authority, formerly possessed by the transferring bank, and the FLB may provide financial assistance to, and discount from, or purchase from, the transferee FLBA any obligation with the endorsement or guarantee of the association. The proceeds of which have been advanced to persons eligible and for purposes of financing the association.

Chapter 3—Merger of Associations into Banks

SEC. 7.8. POWER TO MERGE.

On approval of a plan of merger by the FCA Board, and the boards of directors of the merging institutions, and a majority vote cast by the stockholders of the bank and of the association, a PCA or a FLBA may merge into its supervising bank.

Chapter 4—Merger of Like and Unlike Associations

SEC. 7.9. PREREQUISITE TO MERGERS OF UNLIKE ASSOCIATIONS.

This section provides that there shall be no merger of one or more PCAs with one or more FLBAs until either the direct lending authority of each of the merging PCAs has been vested in the supervising bank or the bank supervising the FLBA has transferred all of its direct lending authority to such associations. The plan of merger must designate one of the supervising banks of the associa-

tions being merged, as the bank responsible for the merged association.

SEC. 7.10. MERGER OF ASSOCIATIONS.

(a) *In General.*—Two or more associations within the same district, (PCAs merging with PCAs or FLBAs), may merge into a single "merged association" if the associations comply with section 7.8, just discussed, and the plan of merger is approved by the Board; the boards of directors of the associations; a majority of the shareholders of each association present and voting, or voting by proxy, at a duly authorized meeting of the stockholders of each association; and the supervising bank.

(b) *Powers, Obligations, and Consolidation.*—Merged associations shall possess all the powers of the associations forming the merged association and shall be subject to all of the obligations imposed on the associations forming the merged association. However, the manner in which the powers and obligations of the associations forming the merged association are consolidated and reconciled in the merged association shall be provided for in FCA regulations.

(c) *Stock Issuance.*—The number of shares of capital stock, and the rights and privileges thereof, issued by a merged association after a merger shall be determined by the board of directors of the merged association established under this section, with the approval of the supervising bank, and shall be consistent with the regulations issued by the Farm Credit Administration.

However, voting stock of a merged association shall be issued to farmers, ranchers, or producers or harvesters of aquatic products who are or were, immediately prior to the merger, direct borrowers from one of the associations forming the merged association (or the supervising bank of such).

(d) *Use of Earnings.*—The board of directors of a merged association shall determine the use or other application of net earnings after payment of operating expenses subject to FCA regulation and supervising bank approval. However, net earnings shall first be applied to restore the value of any impaired capital stock and then applied as additions to allocated or unallocated reserve accounts; the payment of dividends on capital stock; or the payment of patronage refunds in cash or in stock or other notices of allocation.

SEC. 7.11. RECONSIDERATION

(a) *Period.*—A stockholder vote in favor of consolidations (under section 5.17(a)(2)); the merger of banks within a district (under section 7.0); the transfer of the loan related assets and lending authority of a PCA (under section 7.6); the transfer of the lending authority of a FLB or a merged bank having a FLB as one of its constituents (under section 7.7); the merger of an association into a bank (under section 7.8); the merger of two or more associations (under section 7.10); the termination of the status of an institution as a System institution (under section 7.12); and the merger of similar banks (under section 7.15) shall not take effect except in accordance with this section.

(b) *Reconsideration.*—Within 30 days after a vote in favor of any of the above actions, the stockholders of the voting entity shall receive notice of the final results of the vote.

A voluntary merger, transfer, or termination that is approved by a vote of the stockholders of two or more banks or associations under this title, shall not take effect until 30 days after the date on which the stockholders of such associations are notified of the final result of the vote.

If a petition for reconsideration of a merger, transfer, termination, or other actions described above, signed by at least 15 percent of the stockholders of one or more of the merging banks or associations, is presented to the FCA within 30 days after the date of the notification, a voluntary merger, transfer, termination or other action shall not take effect until the expiration of 60 days after the date on which the stockholders were notified, and a special meeting of the stockholders of the affected banks or associations shall be held.

If a majority of stockholders of any one of the affected banks or associations voting, in person or by written proxy, at a duly authorized stockholders' meeting, vote against the proposed action, that action shall not take place.

If a petition for reconsideration of a merger, transfer, or termination or other action is either not filed prior to the 60th day after the vote or, if timely filed, is not signed by at least 15 percent of the stockholders, the action shall become effective in accordance with the plan of merger.

(c) *Special Reconsideration.*—Notwithstanding any other provision of this Act, the FCA shall issue regulations that permit the stockholders of any association that voluntarily merged with one or more associations after December 23, 1985, and before the date of enactment of the Farm Credit Amendments Act of 1987, to file a written petition for organization with the FCA to request the opportunity to organize the stockholders of such association into a separate association. These regulations shall require that the petition for organization be signed by at least 15 percent of the stockholders of any one of the associations that merged during that period. The petition for organization must describe the territory in which the proposed separate association will operate. If the petition for organization is approved the regulations must require that:

(1) the loans of the members of the newly created association shall be transferred from the current association to such new association;

(2) the stock or participation certificates or similar equities of the merged association, that are held by members of the newly created association, shall be retired at book value, the proceeds of which must be transferred to the newly created association, and an equivalent amount of stock or participation certificates, shall be issued to the members by the newly created association; and

(3) other assets of the merged association shall be distributed equitably among the current association and the resulting new association.

Not later than 30 days after the filing of the petition for organization, the current association shall notify the stockholders of such association that a petition to establish the separate association has been filed. Such notification shall contain the date of a special stockholders' meeting to consider the petition for organization; an

enumerated statement of the anticipated benefits to the stockholders of the merged association in establishing a new association; and the potential disadvantages to such stockholders if the new association is established.

All notifications to shareholders shall be submitted to the FCA Board for approval prior to being distributed to the stockholders.

The FCA Board shall require that, prior to the distribution of the notification to the stockholders, the notification shall be amended as the Board determines necessary to provide accurate information to the stockholders that will enable such stockholders to make an informed decision as to the advisability of establishing a new association.

A special stockholders meeting shall be held within 60 days after the filing of the petition for organization to consider the petition. If a majority of the stockholders of the merged association, who would be served by the new association, vote, in person or by proxy, for the approval of the petition, the FCA shall within 30 days of such vote issue a charter to the new association and amend the charter.

Chapter 5—Termination and Dissolution of Institutions

SEC. 7.12. TERMINATION OF SYSTEM INSTITUTION STATUS.

A System institution may terminate its status as a System institution if the institution provides written notice to the FCA Board not later than 90 days prior to the proposed termination date; the termination is approved by the FCA Board; and the appropriate Federal or State authority grants approval to the institution to charter the institution as a bank, savings and loan association, or other financial institution.

Also, the institution must pay to the Farm Credit Assistance Fund (for terminations prior to January 1, 1992) or the Reserve Account (if after January 1, 1992) the amount by which the total capital of the institution exceed 6 percent of assets.

In addition, the institution must pay or make adequate provision for payment of all outstanding debt obligations of the institution. The termination must be approved by a majority of the stockholders of the institution present and voting, or voting by written proxy, at a duly authorized meeting of the stockholders. Also, any other conditions imposed in FCA Board regulations must be met.

SEC. 7.13. DISSOLUTION OF BANKS BY ASSOCIATIONS.

A FLBA may liquidate a FLB in the same district if the loan-related assets and lending authority of the FLB have been assigned to the FLBA and not later than 90 days prior to the proposed dissolution date, the associations submit to the FCA Board written notice of the proposed dissolution and a plan of dissolution that provides for the distribution of the assets of the bank in accordance with the FCA regulations. The plan of dissolution must also provide for the payment, discharge, or adequate provision for all obligations of the bank.

Also, consent to the dissolution and approval of the plan of dissolution must be granted by the FCA Board; and the plan of dissolution must be approved by a majority vote of the stockholders of the bank present and voting, or voting by written proxy, at a duly au-

thorized meeting of the stockholders of the bank. The associations must comply with other requirements imposed by FCA Board regulations.

The FCAs in a district may liquidate the FICB in the district if certain conditions are met. Not later than 90 days prior to the proposed dissolution date, the associations must submit to the FCA written notice of the proposed dissolution and a plan of dissolution that provides for the distribution of the assets of the bank in accordance with this Act, and the payment, discharge, or adequate provision for all obligations of the bank. Also consent to the dissolution and approval of the plan of dissolution must be granted by the FCA Board and the plan of dissolution must be approved by a majority vote of the stockholders of the bank present and voting, or voting by written proxy, at a duly authorized meeting. The associations must also comply with other requirements set in FCA regulations.

Subtitle C—Approval of Disclosure Information and Issuance of Charters by the Farm Credit Administration Board

SEC. 7.14. APPROVAL OF DISCLOSURE INFORMATION AND ISSUANCE OF CHARTERS.

(a) *Disclosure of Information.*—This section requires the disclosure of important information to stockholders regarding proposed mergers, dissolutions, terminations and transfers of authorities. After approval of the merger, transfer or other plan of action by the boards of directors of the institutions desiring to undertake such action, the plans shall be submitted to the FCA together with all the relevant information that is to be distributed to the voters.

Within 60 days after receipt of the plan of action, the FCA shall determine whether the information fails to adequately disclose all material facts relevant to the vote.

On notification by the FCA that no deficiencies exist in the plans (or after 60 days of no action by the Board) the submitting entities may submit the plan of action and the disclosure information to the voters.

(b) *Notice of Reasons for Disapproval.*—If the FCA determines that the plans are inadequate, the plan of merger, transfer, assignment of lending authority, dissolution or termination, shall not be submitted to the voters until the Board determines that the deficiencies are corrected.

Subtitle D—Mergers of Like Entities

SEC. 7.15. MERGER OF SIMILAR BANKS.

General.—FLBs, FICBs or Banks for Cooperatives may merge with similar banks in other districts (banks operating under the same title) if the plan of merger is approved by the FCA Board; the respective Boards of Directors of the banks involved; a majority vote of the stockholders of each bank voting, in person or by proxy, at a duly authorized stockholders' meeting in the case of a bank for cooperatives, a majority of the total equity interests in such merging bank for cooperatives (including allocated, but not unallocated, surplus and reserves) held by those stockholders or subscribers to the guarantee fund of the bank.

After such a merger the Board of Directors shall include two directors elected by each of the district boards involved and one outside director elected by the other members of the Board.

SEC. 7.16. MERGER OF SIMILAR ASSOCIATIONS.

FLB associations and PCAs may voluntarily merge with like associations if the merger plan is approved by the FCA, the respective boards of directors, a majority vote of stockholders and the supervising bank.

Associations which decide not to merge cannot be discriminated against. Section 5.17(a)(2) (12 U.S.C. 2251(a)(2)) is amended to provide that the FCA Board shall ensure that disapproving associations shall not be charged any assessment at a rate higher than that charged other like associations in the district and that they shall be provided with financial services and assistance on the same basis as other like associations in the district.

SECTION 206. ELIGIBILITY TO BORROW FROM A BANK FOR COOPERATIVES.

Paragraph (2) of section 3.8 (12 U.S.C. 2129(2)) is amended to read that notwithstanding any other provision of this title, a cooperative or other entity, that under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) has received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration; received loan, or loan commitment from the Rural Telephone Bank; or been certified by the Administrator of the Rural Electrification Administration to be eligible for such a loan, loan commitment, or loan guarantee, and subsidiaries of such cooperatives or other entities shall be eligible to borrow from a bank for cooperatives.

However, a legal entity, more than 50 percent of the voting control of which is held by one or more associations or other entities that are eligible to borrow from a bank for cooperatives, shall be eligible to borrow from a bank for cooperatives, provided that such entity meets certain requirements.

An assoiciation or other entity that is eligible to borrow from a bank for cooperatives shall be considered an "eligible cooperative association" and a "stockholder eligible to borrow from the bank."

SECTION 207. COLLATERAL.

(a) *In General.*—Subsection (c) of section 4.3 (12 U.S.C. 2154(c)) is amended to provide that each System institution shall have on hand at the time of issuance of any note, bond, debentures, or other similar obligations and at all times thereafter maintain, free from any lien or other pledges, notes, and other obligations representing loans made under this Act or real or personal property acquired in connection with loans made under this Act, obligations of the United States or any agency thereof direct or fully guaranteed, other bank assets (including marketable securities) approved by the FCA, or cash, in an aggregate value equal to the total amount of notes, bonds, debentures, or other similar obligations outstanding for which the institution is primarily liable.

Calls.—Subsection (a) of section 4.4 (12 U.S.C. 2155(a)) is amended to provide that each System institution shall be fully liable on notes, bonds, debentures, or other obligations issued by the institution individually, and shall be liable for the interest payments on long-term notes, bonds, debentures, or other obligations issued by

other institutions operating under the same title (Title I—FLBs, Title II—FICBs, and Title III—BCs) of this Act.

Each bank shall also be primarily liable for the portion of any issue of consolidated or System-wide obligations made on its behalf and be jointly and severally liable for the payment of any additional sums as called on by the FCA in order to make payments of interest or principal that any institution primarily liable therefor shall be unable to make.

Such calls shall be made on all nondefaulting institutions in accordance with the proportionate share of the available collateral of each institution compared to the aggregate available collateral held by all such institutions.

Any bank that, pursuant to a call by the FCA, makes a payment of interest or principal to a holder of any issue of consolidated or System-wide obligations of a defaulting institution shall be subrogated to the rights of the holders or former holders of such consolidated or System-wide obligations. On making such call, the FCA shall appoint a receiver for the defaulting institution for the purpose of expeditiously liquidating the institution.

SECTION 208. FEDERAL LAND BANK LOAN SECURITY.

Section 1.9 (12 U.S.C. 2017) is amended to provide that loans originated by a FLB, or in which a ELB has participated in with a lender that is not a System institution, shall not exceed 85 percent of the appraised value of the real estate security. Except that the FCA may, by regulation, require that loans not exceed 75 percent of the appraised value of the real estate security. Also, if the loan is guaranteed by Federal, State, or other governmental agencies, the loans may not exceed 97 percent of the appraised value of the real estate security, as may be authorized under regulations of the FCA.

All loans originated or participated in by a bank under this section shall be secured by first liens on interests in real estate of such classes as may be approved by the Farm Credit Administration. The value of the security shall be determined by an appraisal under appraisal standards prescribed by the bank and approved by the farm Credit System and approved by the Farm Credit Administration.

Additional security for any loan may be required by the bank to supplement real estate security. Credit factors other than the ratio between the amount of the loan and the security value, shall be given due consideration.

Each FLB shall require a financial statement from each borrower at least once every 3 years, or during such a shorter period of time as may be required under regulations of the FCA.

SECTION 209. UNIFORM CHART OF ACCOUNTS.

A new section 5.22A (12 U.S.C. 2257), provides that each System institution shall comply with a uniform chart of accounts, approved by the FCA to standardize and facilitate the reporting of System data. To establish the uniform chart of accounts, the System institution may develop a process of automation internally or contract out with a vendor under open competitive bidding. Each System institution shall submit to the FCA a proposal for the standardiza-

tion of data within 6 months of the date of enactment of this section.

TITLE III—CAPITALIZATION

SECTION 301. CAPITALIZATION OF SYSTEM INSTITUTIONS.

(a) *Minimum Capital Adequacy Standards.*—Within 120 days after the date of the enactment, the FCA shall issue regulations that establish minimum capital adequacy standards for System institutions based on the financial statements of the institution prepared in accordance with generally accepted accounting principles. The standards shall be phased in during the 5 year period beginning on the date of enactment and shall take into consideration relative risk factors as determined by the Farm Credit Administration

During the 5-year period specified above the FCA shall not initiate any receivership, conservatorship, liquidation, or enforcement action against any System institution certified as eligible to issue preferred stock solely because of the failure of such institution to meet minimum capital adequacy standards unless such action is recommended or concurred in by the Farm Credit System Assistance Board.

(b) *Capitalization Bylaws.*—Title IV (12 U.S.C. 2151 et seq.) is amended by inserting after section 4.3 the following new section.

SEC. 4.3A. CAPITALIZATION OF SYSTEM INSTITUTIONS.

Subject to approval by shareholders each bank and association shall adopt bylaws, that provide for the capitalization of the institution. The bylaws adopted:

(A) shall provide for such classes, par value, and amounts of the stock of the institution, as determined appropriate by the Board of Directors;

(B) may provide for the charging of loan origination fees as determined appropriate by the Board of Directors;

(C) shall enable the institution to meet the capital adequacy standards established under the FCA regulations;

(D) shall provide for the issuance of voting stock, which may only be held by—

(i) borrowers who are farmers, ranchers, or producers or harvesters of aquatic products, and cooperative associations eligible to borrow from System institutions under this Act;

(ii) in the case of a Central Bank for Cooperatives, other banks for cooperatives; and

(iii) in the case of banks other than banks for cooperatives, System associations;

(E) shall require that—

(i) as a condition of borrowing from or through the institution, any borrower who is entitled to hold voting stock or participation certificates shall, at the time a loan is made, acquire voting stock or participation certificates in an amount equal to $1,000 or 2 percent of the amount of the loan, whichever is less; and

(ii) within 2 years after the loan of a borrower is repaid in full, any voting stock held by the borrower be converted to nonvoting stock;

(F) may provide that persons who are not borrowers from the institution may hold nonvoting stock of the institution;

(G) shall require that any holder of stock, issued before the adoption of bylaws under this section, exchange a portion of such stock for new voting stock;

(H) do not need to provide for maximum or minimum standards of borrower stock ownership based on a percentage of the loan of the borrower;

(I) shall permit the retirement of stock at the discretion of the institution if the institution meets the capital adequacy standards established under FCA regulations; and

(J) shall permit stock to be transferable.

Such capitalization bylaws adopted by the Board of Directors of a System institution shall take effect only upon approval of a majority of the stockholders present and voting, or voting by written proxy, at a duly authorized stockholders meeting.

Except as provided in paragraph (2) and in section 4.9B, the Board of Directors of a System institution shall not reduce the capital of the institution through the payment of patronage refunds or dividends, or the retirement of stock or allocated equities if, after or due to such action, the capital of the institution would thereafter fail to meet the minimum capital adequacy standards.

However, any System institution subject to Federal income tax may pay patronage refunds partially in cash, if the cash portion of the refund is the minimum amount required to qualify the refund as a deductible patronage distribution for Federal income tax purposes and the remaining portion of the refund paid qualifies as capital.

The Farm Credit Administration may issue a directive that requires compliance with the capital adequacy requirements to the Board of Directors of any System institution that fails to comply.

This section shall not be construed to effect the provisions of this Act that confer on System institutions a lien on borrower stock or other equities and the privilege to retire or cancel such stock or other equities for application against the indebtedness on a defaulted or restructured loan.

To the extent that any provision of this section is inconsistent with any other provision of this Act (other than section 4.9B) the provisions of this section shall control.

TITLE IV—BORROWERS' RIGHTS

SECTION 401. DISCLOSURE BY BANKS AND ASSOCIATIONS.

SEC. 4.13. DISCLOSURE

(a) *In General.*—Section 4.13 (12 U.S.C. 2199) of the Farm Credit Act of 1971 is amended to provide for "meaningful and timely disclosure" at the time of loan closing for borrowers from FCS banks (except banks for cooperatives) and associations, of:

(1) the current rate of interest on the loan;

(2) in the case of an adjustable or variable rate loan, the amount and frequency by which the interest rate can be in-

creased, or if there are no such limits, a statement to that effect, and the factors (including the cost of funds, operating expenses, and provision for loan losses) that will be taken into account by the lending institution in determining adjustments to the interest rate;

(3) the effect, as shown by representative examples, of the required loan origination fees or purchase of stock on the effective rate of interest;

(4) any change in the interest rate applicable to the borrower's loan;

(5) when stock is at risk, a statement indicating that stock purchased is at risk; and

(6) a statement of the various types of loan options available to borrowers, with an explanation of the terms and rights that apply to each type of loan.

(b) *Prior Regulations.*—Any FCA regulations that provide for borrowers' rights shall remain in effect until 120 days after enactment of this Act.

SECTION 402. ADMINISTRATION OF LOANS TO FAMILY FARMERS.

It is the sense of Congress that FCS banks (except banks for cooperatives) and associations should administer distressed loans to family farmers with the objective of utilizing the loan guarantee programs of the Farmers Home Administration and other loan restructuring measures, including participation in interest rate buydown programs that are Federally or State funded, and other Federal and State sponsored financial assistance programs that offer relief to financially distressed family farmers, as alternatives to foreclosures, considering the availability and appropriateness of such programs on a case-by-case basis.

SEC. 4.13B. NOTICE OF ACTION ON APPLICATION.

Each applicant for a loan from FCS bank (except banks for cooperatives) or association and each borrower from such bank or association who is a family farmer (as defined later), and who submits an application for restructuring a distressed loan, shall be entitled to prompt written notice of—

(1) the action on the application;

(2) if the loan applied for is reduced or denied, or the application for restructuring is denied, the reason for such action; and

(3) the applicant's right to appeal of the decision by the lender.

Also, not later than 14 days before accelerating a loan, or otherwise commencing a foreclosure proceeding against a family farmer, the FCS institution shall notify the borrower in writing of the borrower's right to apply for restructuring.

SEC. 4.14. RECONSIDERATION OF CERTAIN ACTIONS.

The Board of Directors of each bank (except banks for cooperatives) and association shall establish one or more credit review committees. These committees shall include at least one representative of producers in the area served by the bank or association.

A loan officer involved in the initial decisions on a loan shall not serve on the credit review committee when the loan that the officer was involved with is before the Committee for review.

Any applicant for a loan that has received a written notice of a decision to deny or reduce the loan may submit a written request, not later than 30 days after receiving the notice, to obtain a review of that adverse decision before the credit review committee.

Any borrower from a bank (except banks for cooperatives) or association who is a family farmer, and has received a written notice of a decision to deny any application for restructuring, may submit a written request, not later than 7 days after receiving the adverse notice, to obtain a review of such decision before the credit review committee.

Persons entitled to either of the above reviews shall be given the opportunity to appear in person before the credit review committee, and may be accompanied by counsel or by any other representative.

An appeal filed with a credit review committee may include a request for an independent appraisal of any interests in property securing the loan other than the stock or participation certificates of the institution held by the borrower. The credit review committee shall arrange for such an independent appraisal which shall be paid for by the borrower. A copy of any such appraisal shall be provided to the borrower.

Promptly after a review by the credit review committee, the committee shall notify the applicant in writing of the decision and the reasons for the decision.

SEC. 4.14A. RESTRUCTURING DISTRESSED LOANS.

Each farm credit district Board of Directors shall develop a policy, within 60 days after enactment, to govern the restructuring of distressed loans of family farmers.

The policy established shall include an explanation of the procedure for submitting an application for restructuring and the right of borrowers who are family farmers to seek review of a denial of an application for restructuring by a credit review committee.

Each bank (except banks for cooperatives) and association shall post in each loan office and provide to borrowers who are family farmers, at the time of loan closing and on request, a copy of the restructuring policy.

Unless the borrower has previously been furnished a copy of the restructuring policy, a borrower who is a family farmer and who submits an application for restructuring shall be provided with a copy of that policy at the time of the application.

When a bank or association receives an application for restructuring from a borrower who is a family farmer, the lender shall determine whether the potential cost to the institution of restructuring the loan is less than or equal to the potential cost of foreclosure, considering the loss that the institution would likely incur in both instances. If the bank or association determines that the potential cost to the institution of restructuring the loan is less than or equal to the potential cost of foreclosure, the bank or association shall restructure the loan.

In this calculation the following shall be considered:

(1) whether the borrower has been cooperative and has acted in good faith in dealing with the institution;

(2) whether the borrower has presented a restructuring plan and cashflow analysis, using reasonable and realistic projections and assumptions, showing a high probability that the operation of the borrower will return to financial viability as a result of the proposed restructuring or that the operation of the borrower will reduce the risk position of the institution and, in addition, that orderly debt retirement will occur;

(3) whether the borrower has been applying and will continue to apply income in excess of the reasonable and necessary living and operating expenses of the borrower to the retirement of debt obligations;

(4) whether the borrower has been maintaining and will continue to maintain the buildings, improvements, and other farm-related assets in a reasonable state of repair, and has been caring for and will continue to care for all other collateral including livestock;

(5) whether the borrower has pledged, or is willing to pledge as additional collateral, all unencumbered assets of greater than nominal value and all other assets with remaining equity that have greater than nominal value;

(6) whether the borrower has demonstrated good farm management skills;

(7) whether the borrower has furnished or is willing to furnish complete and current balance sheets and income and expense statements in a form acceptable to the institution;

(8) whether, and to what extent, other creditors of the borrower are willing to make reasonable concessions; and

(9) the effect, if any, the proposed restructuring would have on the liability of other comakers or endorsers, guarantors, or other accommodation parties.

Nothing is this section shall prevent a bank or association from commencing a foreclosure proceeding, or taking such other lawful action as considered appropriate by the institution, if the institution has reasonable grounds to believe that a borrower is likely to dissipate assets or divert collateral or that collateral is in imminent danger of deterioration.

The following are key definitions concerning sections 4.13B and 4.14.

The term "distressed loan" is defined as a loan that the borrower does not have the financial capacity to pay according to its terms, but that is not yet subject to a foreclosure or bankruptcy proceeding. Also, the circumstances must indicate that the borrower is experiencing adverse financial and repayment trends; the loan is delinquent or past due, and inadequate capitalization, together with one or more of the above, presents a high probability of loss to the institution.

The term "family farmer," in summary, means:

an individual and/or spouse engaged in farming whose aggregate debts do not exceed $1.5 million so long as not less than 80% of the debts arise out of farming, and such individual and spouse receive from farming operations more than 50% of gross income;

a corporation or partnership in which more than 50% of the stock is held by one family, or relatives, and more than 80% of

the value of the corporation's assets consist of farm operation assets, if its aggregate debts do not exceed $1.5 million so long as not less than 80% of the debts arise out of farming.

The term "foreclosure proceeding" means a foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a distressed loan; or the seizing of and realizing on non-real property collateral, other than collateral subject to a certain statutory lien (arising under title I or II) to effect collection of a distressed loan.

The terms "restructure" and "restructuring" include forbearance actions on distressed loans that result in rescheduling, renewal, monetary concessions, settlement of debt or other similar actions that result in modification of the loan terms, but do not include normal loan servicing actions, such as reschedulings, renewals, extensions, partial releases of collateral or changes in interest rate pricing, on loans that are not distressed loans.

SECTION 403. DIFFERENTIAL INTEREST RATES.

A bank shall not establish a differential interest rate program for loans by members of any FLBA unless the board of directors of such an association approves such a program.

A bank or association (except a bank for cooperatives) and offering more than one rate of interest to borrowers shall, at the request of a borrower of a loan provide a review of the loan to determine if the proper interest rate has been established; explain to the borrower in writing the basis for the interest rate charged; and explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

Section 4.13 (12 U.S.C. 2201) (as amended by section 401(a) of the Act) is further amended by requiring that a FLB, FILB, FLBA or PCA offering more than one rate of interest to borrowers, shall, at the request of a borrower of a loan provide a review of the loan to determine if the proper interest rate has been established; explain to the borrower in writing the basis for the interest rate charged, including the rating of the System institution for the loan.

SECTION 404. RIGHT OF FIRST REFUSAL.

Part F of Title IV (12 U.S.C. 2219) is amended by adding a new section.

SEC. 4.37. RIGHT OF FIRST REFUSAL.

Agricultural real estate that is acquired by a Farm Credit System institution as a result of a loan foreclosure or a voluntary conveyance by a borrower who, as determined by the institution, does not have the financial resources to avoid foreclosure shall be subject to the right of first refusal of the previous owner to repurchase or lease the property.

When a System institution first elects to sell this "acquired real estate", the institution shall notify the previous owner by certified mail, within 15 days or when the institution decides to sell, of the owner's right to purchase the property at the appraised fair market value of the property (as established by an accredited appraiser) or to offer to purchase the property at a price less than the appraised value.

To purchase the property the previous owner must, within 15 days after receiving the notice, submit an offer to purchase the property.

A System institution receiving such an offer from the previous owner to purchase the property at the appraised value shall, within 15 days after the receipt of such offer, accept such offer and sell the property to the previous owner.

A System institution receiving an offer from the previous owner to purchase the property at *less* than the appraised value may accept such offer and sell the property to the previous owner. Notice shall be provided to the previous owner of the acceptance or rejection of such offer within 15 days after the receipt of such offer.

An institution of the System that rejects an offer from the previous owner to purchase the property at *less* than the appraised value may not sell the property to any other person at a price equal to, or less than, that offered by the previous owner or on different terms and conditions than those that were extended to the previous owner, without first affording the previous owner an opportunity to purchase the property at such price or under such terms and conditions.

Notice of the opportunity to buy discussed above shall be provided to the previous owner by certified mail, and the previous owner shall have 15 days in which to submit an offer to purchase the property at such price or under such terms and conditions.

Whenever a System institution elects to lease acquired real estate, the institution shall, within 15 days after such election, notify the previous owner by certified mail of the owner's right to lease the property at a rate equivalent to the fair market value of the property for rental purposes, as established by an accredited appraiser; or to offer to lease the property at a rate less than the appraised value for rental purposes.

To be eligible to so lease the property the previous owner must, within 15 days after receiving notice, submit an offer to lease the property.

A System institution receiving an offer from the previous owner to lease the property at a rate equivalent to the fair market value of the property for rental purposes shall, within 15 days after the receipt of the offer, accept such offer and lease the property to the previous owner unless the institution determines that the previous owner does not have the resources available to conduct a successful farming or ranching operation; or cannot meet all of the payments, terms, and conditions of such lease.

A System institution receiving an offer from the previous owner to lease the property at a rate less than the appraised value of the property for rental purposes may accept such offer and lease the property to the previous owner and has 15 days to decide and notify the previous owner of its acceptance or rejection of the offer.

A System institution rejecting an offer from the previous owner to lease the property at a rate less than the appraised value of the property for rental purposes may not lease the property to any other person at a rate equal to or less than that offered by the previous owner or on different terms and conditions than those that were extended to the previous owner without first affording the

previous owner an opportunity to lease the property at such rate (by providing 15 days advance notice by certified mail).

If System institution elects to sell or lease acquired property through a public auction or similar competitive bidding process, the institution shall notify the previous owner, by certified mail, of the availability of the property, and such notice shall contain the minimum qualifying amount, if any and any terms and conditions to which such sale or lease will be subject.

If two or more qualified bids are the highest, and tie, and one of the qualified bids is offered by the previous owner, the institution shall accept the offer by the previous owner.

No institution of the System may discriminate against a previous owner in any public auction, competitive bidding process, or other similar public offering of such person's former property that has been acquired by the institution.

Financing by a System institution shall not be considered to be a term or condition of a sale of acquired real estate. A System institution is not required to provide financing to the previous owner in connection with the sale of acquired real estate.

TITLE V—STATE MEDIATION PROGRAM

SECTION 501. PURPOSES.

The title establishes guidelines for State mediation programs for Farm Credit System (FCS) borrowers and provides for financial assistance to States for administering certain State mediation programs. Certain Federal agencies as well as Farm Credit System institutions are required to participate in the mediation process.

SECTION 502. QUALIFYING STATES.

A State is eligible for Federal financial assistance if the Secretary of Agriculture determines that the State has in effect a farm loan mediation program that meets the requirements of the next section of this title (section 503).

In addition, in order to receive such Federal funding the Secretary must make certain determinations regarding the law of the state. State law must require that not less than 21 days before the creditor of a farm borrower engages in foreclosure proceedings that the creditor so notify the individual and explain that the individual may apply within 21 days to the farm loan mediation program of the State to obtain mediation services.

State law must provide that foreclosure actions of the creditor shall be suspended during the pendency of State mediation. The 21 day advance notice shall also include an address and telephone number where information and assistance may be obtained about the farm loan mediation program of the State.

The law of the State must further require the State to make farm management counseling and technical support available to any individual with a farm loan who faces substantial financial difficulties, or to creditors who request such support, and to provide financial advice regarding the restructuring proposals (at no more than a reasonable fee). The law must also require the State to give priority regarding who provides these services to community-based organizations and educational institutions with an established history of service to family farming enterprises.

Within 15 days after the Secretary receives from the Governor of a State, a description of the farm loan mediation program of the State and a statement certifying that the State has met the above requirements, the Secretary shall determine whether the State is a qualifying State.

In the event that the Secretary denies certification of a State as a qualifying State, the Secretary shall so notify the Governor and explain the reasons for such denial.

However, the Secretary shall waive the determination of qualification required under this section for each State that has in effect on January 1, 1988, a farm mediation program described below.

Any State that has a farm loan mediation program in effect on January 1, 1988, may apply for consideration as a qualifying State under these waiver provisions. Not later than 15 days after the Secretary receives a request for a waiver, the Secretary shall waive the definition of qualifying State if the State program:

(1) provides for a dispute resolution process by an impartial third party who shall assist the farmer, and the creditors of the farmer, in negotiating a settlement of the dispute over the farm related debts of the farmer;

(2) is authorized or administered by an agency of the State government or by the Governor of the State;

(3) provides for the training of mediators;

(4) provides that the mediation sessions shall be confidential; and

(5) ensures that all lenders and borrowers of agricultural loans, receive adequate notification of the mediation program.

SECTION 503. MEDIATION PROGRAM.

To receive Federal financial assistance, unless a waiver is granted, the farm loan mediation program of a State must be conducted as follows:

The head of the mediation program must select and train mediators for each county (or other local region).

On receipt of an application for mediation, the mediation program shall notify each financial counterpart and appoint a mediator to facilitate negotiations between the individual and each financial counterpart.

The mediator appointed must arrange for an initial meeting to be held within 21 days after receipt of the mediation application.

The program must require mediators to facilitate negotiations by listening to each individual desiring to be heard; to advise each individual as to the existence of available assistance programs; to attempt to mediate, to encourage each individual to refinance or provide for the payment of the debts involved; and to assist in reaching settlement agreement.

The program must contain reasonable guidelines to ensure that each borrower and each financial counterpart participates in good faith in efforts to restructure the loans by attending all mediation meetings and providing all relevant financial information.

SECTION 504. MATCHING GRANTS TO STATES.

Within 60 days after the Secretary approves an application for the operation of the farm loan mediation program, the Secretary of Agriculture shall provide financial assistance to the State equal to

not more than 50 percent of the cost of the operation and administration of the farm loan mediation program. However, the Secretary shall not pay more than $750,000 per year to a single State.

SECTION 505. PARTICIPATION OF FEDERAL AGENCIES.

The Secretary of Agriculture shall prescribe rules requiring each program under the jurisdiction of the Secretary that makes, guarantees, or insures farm loans to cooperate in good faith with requests for information and present and explore debt restructuring proposals advanced in the course of mediation under any farm loan mediation program.

The Farm Credit Administration shall similarly prescribe rules requiring the System institutions of the Farm Credit System to cooperate in good faith with requests for information and to present and explore debt restructuring proposals advanced in the course of mediation under any farm loan mediation program.

SECTION 506. AUTHORIZATION OF APPROPRIATIONS.

The bill authorizes to be appropriated to carry out this funding for State mediation programs $7.5 million for each of the fiscal years 1988 through 1991.

SECTION 507. REGULATIONS.

Within 60 days after the date of enactment of the title, the Secretary and the FCA shall prescribe such regulations as may be necessary to carry out the state mediation provisions.

TITLE VI—FARMERS HOME ADMINISTRATION LOAN RESTRUCTURING

SECTION 601. DEFINITIONS.

Section 343 of the Consolidated Farm and Rural Development Act (Con Act) (7 U.S.C. 1991) is amended to add new definitions.

Borrower.—The term "borrower" means all Farmers Home Administration (FmHA) borrowers, including farmer program borrowers whose debt obligation to the Secretary that has been accelerated but not foreclosed upon or liquidated, voluntarily or otherwise.

Loan Service Program.—The term "loan service program" means, with respect to a farmer program borrower, a primary loan service program or a preservation loan service program.

Preservation Loan Service Program.—The term "preservation loan service program" means—

(A) homestead retention as authorized under section 352 (described later in this outline); and

(B) a leaseback or buyback of farmland authorized under section 335 (also described later in this outline).

Primary Loan Service Program.—The term "primary loan service program" means—

(A) loan consolidation, rescheduling, or reamortization;

(B) interest rate reduction, including the use of the limited resource program;

(C) loan restructuring, including deferral, set aside, or writing down of principal or accumulated interest charges, or both, of the loan; or

(D) any combination of (A), (B) and (C).

SECTION 602. ADDITIONAL COLLATERAL.

Section 307 of the Con Act (7 U.S.C. 1927) is amended by adding a new subsection 307(e).

This new subsection provides that the Secretary may not require any borrower to provide additional collateral to secure a Farmers Home Administration (FmHA) farmer program loan made or insured under this title, if the borrower is current in the payment of principal and interest on the loan.

Also, the Secretary may not bring any action to foreclose, or otherwise liquidate, any such loan as a result of the failure of a FmHA borrower to provide additional collateral to secure a loan, if the borrower was current in the payment of principal and interest on the loan at the time the additional collateral was requested.

SECTION 603. PAYMENT OF LOSSES ON GUARANTEED LOANS.

Section 309 of the Con Act (7 U.S.C. 1929) is amended by adding two new sections—309 (i) and (j).

These new sections provide that the Secretary may negotiate the settlement of a guaranteed loan with a lending institution to enable the Secretary to honor a portion of a guarantee and avoid foreclosure of the loan.

Also, the new sections provide that within 90 days after a court confirms a bankruptcy under title 11, for any borrower of a FmHA farmer program loan guaranteed under this title, that the Secretary shall pay the lender an amount estimated by the Secretary to be equal to the guaranteed portion of the loss incurred under the backruptcy or reorganization plan by the lender for purposes of the guarantee.

If the lender of a FmHA farmer program loan guaranteed under this title takes any action to cancel part of the loan and restructure the remainder under the Secretary and if the Secretary approves such action, requirements set forth by the lender shall be treated as having sustained a loss, with respect to the guarantee equal to the amount by which the outstanding balance of the loan immediately before such action exceeds the outstanding balance of the loan immediately after such action and the Secretary shall honor the guarantee within 90 days after the Secretary approves the action.

Any amount so paid to a lender shall be treated as payment toward satisfaction of the loan guarantee.

SECTION 604. NOTICE OF LOAN SERVICE PROGRAMS.

The Con Act is amended by inserting after section 332C (7 U.S.C. 1981c) a new section 331D.

This new section provides that the Secretary shall issue notice by certified mail to each FmHA farmer program borrower of a loan made or insured under this title and who is at least 180 days delinquent in the payment of principal or interest on such loan.

The notice shall:

(1) include a summary of all primary loan service programs and preservation loan service programs, including the eligibility criteria, and terms and conditions of each program;

(2) include a summary of the manner in which the borrower may apply, and be considered for all such programs, except that the Secretary shall not require the borrower to select

among such programs or waive the borrower's right to appeal, or waive any rights to be considered for any other programs carried out by the Secretary;

(3) advise the borrower regarding all filing requirements and any deadlines that must be met for requesting loan servicing;

(4) provide any relevant forms, including applicable response forms;

(5) advise the borrower that a copy of regulations is available on request; and

(6) be designed to be readable and understandable by the borrower.

All notices required by this section shall be contained in the regulations implementing this title.

The notice just described shall be provided at the time an application is made for participation in a loan service program, on the written request of the borrower, and prior to the earliest of:

(1) initiating any liquidation;

(2) requesting the conveyance of security property;

(3) accelerating the loan;

(4) repossessing property;

(5) foreclosing on property; or

(6) taking any other collection action.

The Secretary shall consider a farmer program borrower for all loan service programs if, within 45 days of receipt of the notice required in this section, the borrower requests such consideration in writing.

SECTION 605. COUNTY COMMITTEES.

This section concerns the election of members of county committees. It requires that the Secretary assure that farmers have at least 45 days to submit nominations following the general public notice of any nomination procedures for county committee elections and at least 30 days, following the general public notice of an election in each county, before an election is held.

SEC. 606. ADMINISTRATIVE APPEALS.

Section 333B of the Con Act (7 U.S.C. 1983b) is amended by adding at the end a new subsection (333B(d)).

This new subsection requires the Secretary to establish and maintain within the Farmers Home Administration (FmHA) a national appeals division, consisting of a director, hearing officers and other necessary personnel, all of whom shall be employees of the FmHA and shall have no duties other than hearing and determining these formal FmHA appeals.

Hearing officers within the appeals division shall hear and determine all formal appeals by FmHA borrowers from decisions made by county supervisors, county committees, district directors, State directors, or other employees of the Secretary working within a State.

These hearings shall be held within the borrower's State and the decisions of hearing officers shall, upon the request of the person appealing, be reviewed by the director of the State appeals division. Also upon request of the person appealing the decisions of the State director shall be subject to further review by the director of FmHA national appeals division.

The State director may, if any appeal received presents particularly important administrative or legal questions, decline review and transmit the matter to the director of the FmHA national appeals division for immediate review.

Hearing officers within the national appeals division shall report to the principal officers of the division, and shall not be under the direction and control of, or receive administrative support (except on a reimbursable basis) from, offfices other than the national appeals division.

The Secretary shall ensure that the national appeals division has resources and personnel adequate to hear and determine all initial appeals within the state of the person appealing on a timely basis, and that hearing officers receive training adequate for their duties upon initial employment and at regular intervals thereafter. The Secretary may spend sums available in the Farmers Home Administration's revolving insurance funds in the event that necessary appropriations sufficient to fund the division are not available.

SEC. 607. DISPOSITION AND LEASING OF FARMLAND.

Section 335(e) of the Con Act (7 U.S.C. 1985(e)) is amended to require that during the 180-day period beginning on the date of acquisition, or during the applicable period under State law, whichever is longer, the Secretary shall allow a borrower to purchase or lease real property that has been used to secure any loan made to the borrower under this title and was foreclosed, purchased, redeemed, or otherwise acquired by the Secretary.

The period for the purchase or lease of this real property by such person shall expire 190 days after the date of acquisition, or after the applicable period under State law, whichever is longer.

The rights regarding the purchase or lease of real property provided by this paragraph may be waived if such waiver is freely and knowingly given.

Any such purchase or lease shall be on such terms and conditions as are established in regulations promulgated by the Secretary.

The Secretary shall give the following persons preference in the sale or lease, with option to purchase, of such acquired property in the following order:

(1) The immediate previous FmHA borrower-owner of the acquired property.

(2) If actively engaged in farming the spouse or child of the previous owner (or a stockholder in the corporation who is the spouse or child of the previous owner, if the owner is a corporation held exclusively by members of the same family).

(3) Operators (as of the time immediately after such sale or lease is entered into) of not larger than family-sized farms.

The Secretary shall, within 90 days after the rights of purchase or lease of the previous owner and immediate family have expired, afford an opportunity to purchase or lease "Indian reservation" lands in the following order—an Indian member of a Federally recognized tribe, an Indian corporate entity, and the Federal recognized Indian tribe with jurisdiction over the Indian reservation where the lands are located. If the Indian tribe is unable to purchase or lease the lands, the Secretary shall transfer such lands to

the Secretary of the Interior; who shall administer such lands as if the lands were held in trust by the United States for the benefit of such Indian tribe.

Notwithstanding any other provisions of law, Indian reservation land, which is subject to State, county, municipal, or other local taxation on the day before it is purchased by an Indian member of any Federally recognized Indian tribe, by an Indian corporation, or by the Indian tribe, or is transferred to the Secretary of Interior under these provisions, shall not be exempt from any such taxation by operation or implementation of this section.

("Indian reservation" means all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; land located within the jurisdictional boundaries of a Federally recognized tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian tribe.)

All lease rentals or other income from such Indian lands transferred to the Secretary of the Interior shall be deposited in the miscellaneous receipts of the United States Treasury until an amount is paid that is equal to the lesser of the amount of: (1) the outstanding lien of the United States against such land, as of the date the land was acquired by the Secretary: (2) the fair market value of the land, as of the date of the transfer: or (3) the capitalized value of the land as of the date of transfer.

At the time that the full amount is paid, title to the subject land shall be held in trust by the United States for the benefit of the Indian tribe within whose Indian reservation the lands are located.

However, the Indian tribe within whose reservation the acquired lands are located may, at any time after the lands have been transferred to the Secretary of the Interior, offer to pay the remaining amount on the lien or the fair market value of the land, whichever is less. On payment of such amount, title to such lands shall be held by the United States in trust for the tribe.

The Secretary may enter into a contract with a borrower of a farmer program loan made or insured under this title to provide for the subsequent sale or lease of land to be acquired from the borrower before the Secretary legally acquires such land.

The Secretary shall provide written notice of the availability of such farmland to the immediate previous owner of such land within 30 days of acquisition of the property.

SECTION 608. INCOME RELEASE.

Subsection (f) of section 335 of the Con Act (7 U.S.C. 1985(f)) is amended.

The Secretary shall release from sale or other disposition of chattel security provided for any loan made or insured under this title, or from any other property, income, or payments that (but for the action of the Secretary) would be received by the borrower, an amount sufficient to pay the essential household and farm operating expenses of the borrower, until such time as the Secretary accelerates such loan.

Borrowers whose accounts were accelerated between November 1, 1985 and May 7, 1987, but not thereafter foreclosed or liquidated, shall be entitled to the release of "security income" for 12 months, but not to exceed $18,000 per year sufficient to pay for essential household and farm operating expenses of such borrowers if such borrowers, as of October 30, 1987, continue to be actively engaged in the type of farming operations for which the Secretary had made farm ownership, emergency or operating loans and timely requests restructuring of loans under this title. Borrowers may be eligible for releases after 12 months if the borrower timely requested restructuring but the Secretary has not timely acted on the application. The total income release may exceed $18,000, by an amount proportionate to the period of time beyond 12 months before a final determination is made by the Secretary, for each borrower eligible for such releases after such 12-month period. (The County Committee in the County that the borrowers land is located in shall determine whether the borrower continues to be actively engaged in farming.)

The Secretary shall provide notice, by certified mail (within 45 days of the date of enactment) to such borrowers of the right to apply for these benefits, and the releases shall be made to qualified borrowers who have responded to the notice within 30 days of receipt. Such releases shall continue to be made until a denial or dismissal of the application of the borrower for restructuring. The Secretary shall make a final restructuring decision within 12 months.

If a borrower is required to plan for or to report on how proceeds from the sale of collateral property will be used, the Secretary shall notify the borrower of such requirement; and notify the borrower of the right to the release of funds under this section and the means by which a request for the funds may be made.

The Secretary shall issue regulations consistent with this section that ensures the release of funds to each borrower and establish guidelines for income releases including a list of expenditures for which funds will normally be released.

SECTION 609. LOAN MARKETING.

Section 338 of the Con Act (7 U.S.C. 1988) is amended by adding a new section providing for a secondary market in the guaranteed portion of FmHA loans.

Types of loans.—The guaranteed portion of any FmHA loan may be sold by the lender, and by any subsequent holder, in accord with regulations of the Secretary of Agriculture.

The regulations of the Secretary must provide that all fees due the Secretary with respect to a guaranteed loan are to be paid in full before any sale, and that the loan is to have been fully disbursed to the borrower before the sale.

After a FmHA loan is sold in the secondary market, the lender shall remain obligated under the guarantee agreement with the Secretary, and shall continue to service the loan in accordance with the terms and conditions of such agreement.

These provisions shall not be interpreted to impede or extinguish the duty of the borrower, or the successor in interest to the borrower, to repay any such loan.

Pooling Loans.—The market makers approved by the Secretary may issue pool certificates representing ownership of part, or all, of the portion of any FmHA loan guaranteed by the Secretary. Such certificates shall be based on, and backed by, a pool established or approved by the Secretary and composed solely of the guaranteed portion of FmHA loans.

Guarantee of Timely Payment.—The Secretary may, on such terms and conditions as the Secretary considers appropriate, guarantee the timely payment of the principal and interest on pool certificates by approved market makers. If a loan in such pool is prepaid, either voluntarily or by reason of default, the guarantee of timely payment of principal and interest on the pool certificates shall be reduced in proportion to the amount of principal and interest represented in the pool by the prepaid loan.

Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Secretary only through the date of the payment on the guarantee. During the term of the pool certificate, the certificate may be called for redemption due to repayment or default of all loans constituting the pool.

Full Faith and Credit Pledge.—The full faith and credit of the United States is pledged to the payment of all amounts that may be required to be paid under any guarantee. The Secretary shall not collect any fee for any guarantee except for fees reasonably necessary to recover estimated costs of paying claims under guarantees.

Limits on State and Local Laws.—No Federal, State, or local law shall preclude or limit the exercise of the ownership rights of the Secretary in those portions of loans constituting the pool against which the certificates are issued.

Final Regulations.—On the adoption of final rules the Secretary of Agriculture shall:

Provide for the central collection of registration information from all participating market makers for all loans and pool certificates. Such information shall include (with respect to each original sale and any subsequent sale)—

(i) the identification of the interest rate paid by the borrower to the lender;

(ii) the servicing fee of the lender;

(iii) whether interest on the loan is at a fixed or variable rate;

(iv) identification of each purchaser of a pool certificate, and the interest rate paid on the certificate; and

(v) such other information as the Secretary considers appropriate.

Fees.—The Secretary shall provide such credit enhancement, through private sources or otherwise, as is reasonably necessary to recover estimated costs of paying claims under guarantees issued under this section.

Disclosure Requirements.—Before any sale, require the seller to disclose to each prospective purchaser and to each prospective purchaser of a pool certificate information on the terms, conditions, and yields of such instrument.

Market Maker Requirements.—Each market maker shall be required:

(i) to service all pools formed, and participations sold, by the market maker; and

(ii) to provide the Secretary with information relating to the collection and disbursement of all periodic payments, prepayments, and default funds from lenders, to or from the reserve fund which the Secretary shall establish to enable the timely payment guarantee to be self-funding, and from all beneficial holders.

Annual Report to Congress.—Not later than March 31 of each year, the Secretary shall submit to the Congress an annual report on FmHA secondary market operations. These reports shall include:

(i) the number and the total dollar amount of loans sold in the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the interest rate is fixed or variable, and premium paid;

(ii) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premium;

(iii) the number and total dollar amount of pools formed;

(iv) the number and total dollar amount of loans in each pool;

(v) the dollar amount, interest rate, and terms on each loan in each pool, and whether the interest rate is fixed and variable;

(vi) the number, face value, interest rate, and terms of the pool certificates issued for each pool;

(vii) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to farmers; and

(viii) an analysis of the above information regarding the access of farmers to capital at reasonable rates and terms as a result of secondary market operations.

Regulations.—Within 180 days after the date of the enactment, the Secretary shall promulgate final regulations to implement this section.

SECTION 610. CONSERVATION EASEMENTS.

Section 349 of the Con Act (7 U.S.C. 1997) is amended by including "wildlife habitats" in the conservation reserve program.

SECTION 611. INTEREST RATE REDUCTION PROGRAM: DEMONSTRATION PROJECT FOR PURCHASE OF SYSTEM LAND.

(a) *Extension of Interest Rate Reduction Program.*—Section 1320 of the Food Security Act of 1985 (Public Law 99-198; 99 Stat. 1532) is amended by extending the interest rate reduction program until 1993.

(b) *Demonstration Project.*—Section 351 of the Con Act (7 U.S.C. 1999) is amended by adding a new section requiring that the Secretary establish, for a 3 year period, a demonstration project under which the Secretary may issue vouchers (certificates of eligibility) to eligible borrowers to reduce the interest rate paid by the borrowers on loans obtained from legally organized lending institutions and FCS institutions to purchase acquired properties owned by in-

stitutions of the FCS that are certified to issue preferred stock under section 6.27 of the Farm Credit Act of 1971.

To be eligible to participate in the project, a borrower must provide a down payment to purchase the land, using personal funds of the borrower, equal to at least 15 percent of the purchase price of the land and meet all conservation requirements for the land that are imposed on borrowers of guaranteed farm ownership loans.

The certificates of eligibility issued may be used to reduce the interest rate payable by an eligible borrower on a guaranteed loan by not more than 4 percent. Also, the certificates issued shall reduce the interest rate on a guaranteed loan for a term equal to the outstanding term of such loan, or 5 years, whichever is less.

However, if the lender of a guaranteed loan assisted under this subsection reduces the interest rate payable on the loan by at least 1 percent, the Secretary may guarantee the repayment of 95 percent of the principal and interest due on the loan.

For these purposes, the Secretary may transfer such amounts as may be necessary from farm operating guaranteed loans to farm ownership guaranteed loans.

In addition, FCA System institutions shall sell land to eligible borrowers at fair market value and to the extent practicable, set aside each fiscal year for purchase by eligible borrowers land acquired or owned by such institutions of the Farm credit System in an aggregate amount not to exceed $250,000,000 at fair market value. Also, if necessary, tracts of land made available shall be subdivided into parcels that permit eligible borrowers to purchase the parcels consistent with limits place on the size of loans made, insured, or guaranteed under these lending programs.

Not later than 60 days after the date of enactment, the Secretary and the FCA shall develop a joint memorandum of understanding governing the implementation of this subsection.

SECTION 612. HOMESTEAD PROTECTION.

Section 352 of the Con Act (7 U.S.C. 2000) is amended to provide for greater homestead protection for FmHA borrowers.

As permitted by current law, the Secretary (or the Administrator) may, on application by a borrower, permit the borrower to retain possession and occupancy of homestead property under certain conditions. This section adds to current law the requirement that the homestead include land with a reasonable number of farm outbuildings located on the adjoining land, that are useful for purposes related to the homestead occupants, but not exceeding 10 acres.

The borrower may retain possession if the Secretary (or the Administrator for Small Business Act loans): (1) forecloses; (2) holds the property in inventory on the date of the enactment; (3) takes into inventory property securing a loan made or insured under this title; or, (4) the borrower of a loan made or insured by either agency files a petition in bankruptcy or agrees to voluntarily liquidate or convey such property in whole or in part.

Eligibility

To be eligible to occupy homestead property, a borrower of a loan must apply for such occupancy not later than 90 days after the

property is acquired, have received from farming or ranching operations gross farm income reasonably commensurate with the size and location of the farming unit of the borrower and the local agricultural conditions (including natural and economic conditions), in at least 2 calendar years during the 6-year period preceding the calendar year in which the application is made. Also the homestead exemption applicant must have received from farming or ranching operations at least 60 percent of the gross annual income of the borrower and any spouse of the borrower in at least 2 calendar years during the 6-year period mentioned above; and have continuously occupied the homestead property during that 6-year period.

Rent Payments

During the period of the occupancy of the homestead property, the borrower must pay a reasonable sum as rent for such property to the Secretary or the Administrator based on the rents charged for similar residential properties in the area in which the homestead property is located. Also, during the period of the occupancy of the homestead property, the borrower must maintain the property in good condition and meet such other reasonable and necessary terms and conditions as the Secretary may require consistent with this section.

Termination of Rights

Failure to make timely rental payments shall constitute cause for the termination of all rights of the borrower to possession and occupancy of the homestead property.

Period of Occupancy

The period of occupancy allowed the prior owner of homestead property shall be the period requested in writing by the prior owner, not exceeding 5 years.

At any time during the period of occupancy, the borrower shall have a right of first refusal to reacquire the homestead property on such terms and conditions as the Secretary shall determine, except that the Secretary may not demand a payment for the homestead property that is in excess of the current market value of the homestead property as established by an independent appraisal.

No rights of a borrower, and no agreement entered into between the borrower and the Secretary for occupancy of the homestead property, shall be transferable by the borrower or by operation of any law, except that in the case of death or incompetency of such borrower, such rights and agreements shall be transferable to the spouse if the spouse agrees to comply

Within 30 days of the acquisition of the homestead property securing a FmHA loan the Secretary shall notify the borrower from whom the property was acquired of the availability of homestead protection rights. For property in inventory on enactment, the Secretary shall make a good faith effort to notify the borrower of the homestead protection rights.

The Secretary may enter into contracts regarding property to be acquired before the Secretary acquires title to the homestead property.

SECTION 613. DEBT RESTRUCTURING AND LOAN SERVICING.

The Con Act (7 U.S.C. 1921 et seq.) is amended by adding at the end a new section 353.

SEC. 353. DEBT RESTRUCTURING AND LOAN SERVICING.

The Secretary shall modify delinquent FmHA loans to the maximum extent possible to avoid losses to the Secretary on such loans, with emphasis being placed on writing-down the loan principal and interest, and debt set-aside, whenever these procedures would facilitate keeping the borrower on the farm, or otherwise through the use of primary loan service programs and to ensure the borrowers are able to continue farming or ranching operations.

To be eligible to obtain such assistance the delinquency must be due to circumstances beyond the control of the borrower; the borrower must have acted in good faith with the Secretary in connection with the loan; the borrower must present a plan to the Secretary that contains reasonable assumptions that demonstrate that the borrower will be able to meet the necessary family living and farm operating expenses and service all debts, including those of the loans restructured; and the loan, if restructured, must result in a net recovery to the Federal Government, during the term of the loan as restructured, that would be more than or equal to the net recovery to the Federal Government from an involuntary liquidation or foreclosure on the property securing the loan.

In determining the net recovery from the involuntary liquidation of a loan the Secretary shall calculate the recovery value of the collateral securing the loan, and the value of the restructured loan.

The recovery value of the collateral securing the loan shall be based on the amount of the current appraised value of the property securing the loan less the estimated administrative, legal, and other expenses associated with the liquidation and disposition of the loan and collateral.

These estimated expenses shall include the payment of prior liens, the costs of taxes and assessments, depreciation, management, the yearly percentage decrease or increase in the value of the property, and lost interest income (each calculated for the average holding period for the type of property involved). Also, included in these estimated expenses shall be the resale expenses, such as repairs, commissions, and advertising and other administrative and attorney's costs.

The value of the restructured loan shall be based on the present value of payments that the borrower would make to the Federal Government if the terms of such loan were modified under any combination of primary loan service programs to ensure that the borrower is able to meet such obligations and continue farming operations.

Within 60 days after receipt of a written request for restructuring the Secretary shall make the appropriate calculations, notify the borrower in writing of the results of such calculations and provide documentation for the calculations.

If the value of the restructured loan is greater than or equal to the recovery value, the Secretary shall, within 45 days after notifying the borrower of such calculations, offer to restructure the loan obligations of the borrower through primary loan service programs

that would enable the borrower to meet the obligations (as modified) under the loan and continue the farming operations of the borrower. The borrower will have 45 days to accept.

In selecting the restructuring alternatives to be used in the case of a borrower requesting restructuring the Secretary shall give priority consideration to the use of principal and interest write-down, except that this procedure shall not be required in the case of a borrower unless the other creditors (other than those who are fully collateralized), representing a substantial portion of the total debt of the borrower, agree to participate in the development of the restructuring plan or a State mediation program.

Before eliminating the option to use debt write-down in the case of a borrower, the Secretary shall made a reasonable effort to contact the creditors of such borrower, either directly or through the borrower, and encourage such creditors to participate with the Secretary in the development of a restructuring plan for the borrower.

As a condition of restructuring a loan, the borrower of the loan may be required to enter into a shared appreciation arrangement with FmHA that requires the repayment of amounts written off.

Shared appreciation agreements shall have a term not to exceed 20-years, and shall provide for recapture based on the difference between the appraised values of the security property, which shall be real property, at the time of restructuring and at the time of recapture.

The percentage of appreciation to be recaptured by the Secretary shall be 75 percent of the appreciation in the value of real security property if the recapture occurs within 4-years of the restructuring, and 50 percent if during the remainder of the term of the agreement. (The recaptured amounts can not exceed the amounts written off.)

Recapture shall take place at the end of the term of the agreement, or sooner on the conveyance of the real security property; on the repayment of the loans; or if the borrower ceases farming operations. However, transfer of title to the spouse of a borrower on the death of the borrower shall not be treated as a conveyance.

Notice of Ineligibility

No foreclosure or other similar actions shall be taken to liquidate any loan determined to be ineligible for restructuring by the Secretary until the borrower has been given the opportunity to appeal such decision and if the borrower appeals, and the appeals process has been completed and a determination has been made that the loan is ineligible for restructuring.

Once such an appeal has been filed, a decision shall be made at each level in the appeals process within 45 days after the receipt of the appeal or request for further review. A notice of ineligibility for restructuring shall be sent to the borrower by registered or certified mail within 15 days after such determination. The notice shall contain the determination and the reasons for the determinations; the computations used to make the determination, including the calculation of the recovery value of the collateral securing the loan and a statement of the right of the borrower to appeal the decision to the appeals division, and to appear before a hearing officer.

Independent Appraisals

An appeal filed may include a request by the borrower for an independent appraisal of any property securing the loan. On such request, the appeals division shall arrange for the independent appraisal, the cost of which shall be borne by the borrower, and the results of such appraisal shall be considered in any final determination concerning the loan. A copy of any such appraisal shall be provided to the borrower.

If, at any time after the end of 18 months after the obligations of a farmer program borrower have been restructured under these procedures the borrower has remained delinquent for 180 days in the repayment of the restructured loan, the Secretary shall give notice to the borrower of the intention to accelerate the loan and foreclose on all collateral used to secure the loan and to terminate all additional assistance to the borrower.

Unless, within 60 days after issuance of that notice, the borrower becomes current with respect to all obligations as restructured, the Secretary shall terminate all further assistance to the borrower and shall proceed to acceleration, foreclosure, or liquidation. The Secretary, at the Secretary's discretion, may waive the provisions of this paragraph in exceptional circumstances.

SECTION 614. TRANSFER OF INVENTORY LANDS.

Subtitle D of the Con Act (7 U.S.C. 1997 et seq.) is amended by adding a new section.

SEC. 354. TRANSFER OF INVENTORY LANDS.

The Secretary, without reimbursement, may transfer to any Federal or State agency, for conservation purposes any real property, or interest therein, administered by the Secretary under this Act with respect to which the rights of all prior owners and operators have expired that is determined by the Secretary to be suitable or surplus and that has marginal value for agricultural production is environmentally sensitive or has special management importance.

SECTION 615. REGULATIONS.

Not later than 150 days after enactment, the Secretary shall issue final regulations, after considering public comment obtained under the Administrative Procedure Act, carry out the amendments made by this title.

TITLE VII—SECONDARY MARKET

Sec. 701

This section states the purposes of this title of the bill.

Sec. 702.

8.0 Definitions

(1) *Agricultural property.*—An agricultural commodity or product, or personal property used in the production of an agricultural commodity or product.

(2) *Agricultural real estate.*—Parcel(s) of land used for the production of an agricultural commodity or product and consists of an minimum acreage or annual receipts. Agricultural real estate may also be a principal residence that is a single family, moderate-

priced residential dwelling located in a rural area having a population of less than 2,500.

(3) *Board.*—The Board of Directors of the Mortgage Corporation established under section 8.2(a).

(4) *Certified facility.*—A secondary market agricultural loan facility certified under section 8.5.

(5) *Mortgage Corporation.*—The Federal Agricultural Mortgage Corporation established under section 8.1.

(6) *Credit enhancement.*—The guaranty of timely payment of the principal and interest on securities representing interests in, or obligations backed by, pools of qualified agricultural mortgage loans, in accordance with this Act.

(7) *Originator.*—Any entity that originates and services agricultural mortgage loans.

(8). *Qualified loan.*—An obligation that (A) is secured by a fee-simple or leasehold mortgage with status as a first lien on agricultural real estate located in the United States; or a loan made by a bank for cooperatives of the System pursuant to section 3.7(a); and (B) is an obligation of a person, corporation, or partnership that has training or farming experience that is sufficient to assure a likelihood that the loan be repaid according to its terms; or is an obligation of a cooperative meeting the eligibility standards of section 3.7(a).

8.1 Federal agricultural mortgage corporation

(a) *Charter.*—This paragraph charters the Mortgage Corporation as a federally chartered instrumentality of the United States. While the Mortgage Corporation is deemed to be an institution of the Farm Credit System, this section makes clear that it shall not be liable for any debts or obligations of any institution that is part of the Farm Credit System or of the Farm Credit System as a whole.

(b) *Duties.*—The Mortgage Corporation is empowered to perform three duties. These are (1) developing uniform underwriting, security appraisal and repayment standards for qualified agricultural mortgage loans in consultation with originators of such loans; (2) determining the eligibility of agricultural mortgage marketing facilities to contract with the Mortgage Corporation for credit enhancement of specific mortgage pools; and (3) providing credit enhancement on those mortgage pools.

(c) *Treasury backstop.*—Treasury is authorized to loan a maximum of $1.5 billion to the Mortgage Corporation for credit enhancement purposes. Any loan made would be repaid by the Mortgage Corporation with interest. As long as any of these loans are outstanding, the Mortgage Corporation shall devote its net earnings to the repayment of the principal and accrued interest on such loans.

Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, U.S. Code, after the enactment of this Act. The purposes for which securities may be issued under chapter 31 of title 31 are extended to include such loans.

The Mortgage Corporation will be exempt from all taxation, except that any real property of the Corporation shall be subject to State or local taxation.

8.2 Board of directors

(a) *Interim board.*—Within 90 days of enactment, the President shall appoint an interim board consisting of 15 members. Five members shall be representatives of banks, other financial institutions, and insurance companies; five shall be representatives of System institutions; and five shall be farmers or ranchers who are experienced in financial matters and are not officers or directors of any financial institutions.

After $20 million of voting common stock has been broadly distributed to and purchased by banks, insurance companies, other financial institutions and Farm Credit System institutions, permanent directors shall be elected and appointed. The permanent board shall consist of 15 members. Five members shall be elected by banks, insurance companies, or other financial institutions; five shall be electged by Farm Credit System institutions; and five shall be appointed by the President who are experienced in financial matters, are not officers or directors of any financial institutions, and are representatives of the general public (two of those five must have a farming background). The President shall appoint those members not later than the date $20 million in stock has been sold, or 270 days after the enactment of this Act, whichever is later. The board of director is authorized to annually elect a Chairman from among its members.

The directors appointed by the President shall serve 3 years, except that with regard to the initial appointments of the members the terms of two of the members shall expire 2 years after the date of appointment and the term of one of the members shall expire 1 year after the date of appointment. The elected directors shall be elected for a term expiring on the date of the next annual meeting. If the seat of any elected director becomes vacant after the annual election of directors, the remaining directors shall fill the vacancy for the unexpired portion of the term. In filling vacanies, the Board is expected to perserve the equal representation of institutions that are not members of the Farm Credit System with institutions that are part of the Farm Credit System.

8.3 Powers of the mortgage corporation

Once the permanent board of directors has been duly constituted, the Mortgage Corporation is authorized to provide credit enhancement to securities issued on the security of, or in participation in, pooled interests in qualified loans.

The permanent board of directors shall determine the general policies of the Mortgage Corporation, adopt bylaws, and select, appoint, and compensate qualified persons to fill the senior offices of the Mortgage Corporation. The Corporation has the power to:

(1) operate under the direction of its Board;

(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

(3) provide for such officers, agents and employees as may be necessary, define their duties and compensation levels without

regard to title 5, United States Code, and make provisions against losses caused by the acts of such persons;

(4) prescribe bylaws;

(5) prescribe standards as necessary to carry out this title;

(6) enter into contracts, progress or other payments with respect to such contracts;

(7) enter into contracts, agreements and commitments with persons and entities both inside and outside the Farm Credit System;

(8) sue and be sued in its corporate name and complain and defend in a court of competent jurisdiction;

(9) acquire, hold, lease, mortgage or dispose of real and personal property, provide credit enhancement, sell or exchange any securities or obligations and exercise all the usual incidence of ownership of property necessary or conductive to its business; and

(10) exercise such other incidental powers as are necessary to carry out the powers, duties, and functions of the Mortgage Corporation in accordance with this title.

Not later than 2 years after the date of enactment of this Act, the Comptroller General of the U.S. shall conduct a study, and submit to appropriate committees of Congress a report, on the implementation of this title by the Mortgage Corporation and the impact of the operations of the Mortgage Corporation on farmers, the Farm Credit System and other lenders, and the capital markets.

8.4 Common stock

(a) The Mortgage Corporation is authorized to have common stock in such amounts and with such par value as its board determines. The stock may be issued only to agricultural mortgage loan originators and certified facitities. Each share of common stock shall be entitled to one vote with rights of cumulative voting at all elections of directors. The stock shall be divided into two classes with Class A stock held only by eligible banks, insurance companies, and other financial institutions; and the Class B stock held only by eligible System institutions.

(b) The board shall fix the maximum number of shares the Mortgage Corporation shall have outstanding at any one time. Stock shall be fully transferable, except that in the case of the Mortgage Corporation, a share shall be transferable only on the books of the Mortgage Corporation. No stockholder, other than a holder of Class B stock may own more than 10 percent of the outstanding shares of any class of the common stock.

(c) The Mortgage Corporation may require originators and certified facilities to make nonrefundable capital contributions to the Mortgage Corporation if necessary to carry out this title. Stock shall be issued evidencing any such contributions.

(d) The board may declare dividends on the common stock.

8.5 Certification of facilities

(a) *Standards.—*

(1) The Corporation shall not discriminate between Farm Credit System institutions and non-Farm Credit System organi-

zations and shall, within 120 days of the appointment and election of its board of directors, issue standards with respect to the certification of facilities.

(2) To be eligible to be certified, an agricultural mortgage marketing facility shall—

(A) be an institution of the Farm Credit System or Corporation, association, or trust organized under the laws of a State or the District of Columbia;

(B) have adequate capitalization;

(C) have as one of its purposes the sale or resale of securities representing interests in, or obligations backed by, pools of qualified loans that have been provided credit enhancement;

(D) demonstrate acceptable managerial ability with respect to agricultural mortgage loan underwriting, servicing, and marketing;

(E) adopt appropriate agricultural mortgage loan underwriting, appraisal, and servicing standards and procedures, in conformity with uniform standards established by the Mortgage Corporation;

(F) permit the Mortgage Corporation to examine the books, records, and loan files of the facility with respect to the operations of the facility and enhancement of pools of the facility; and

(G) adopt appropriate minimum standards and procedures relating to loan administration and disclosure to borrowers concerning the terms and rights applicable to loans for which credit enhancement is provided, in conformity with uniform standards established by the Mortgage Corporation.

(b) *Certification.*—Within 60 days of receipt of an application, the Mortgage Corporation shall certify the facility if it meets the standards.

(c) *Term.*—The term of certification established by the Mortgage Corporation shall not exceed 5 years.

(d) *Revocation.*—After notice and hearing, the Corporation may revoke its certification of a facility if the facility no longer meets the standards for certification. Revocation of certification shall not affect any pool credit enhancement that has been issued by the Mortgage Corporation.

8.6 Credit enhancement of qualified loans

(a) *General.*—The Mortgage Corporation is authorized to provide credit enhancement for the timely payment of principal of and interest on securities representing interests in, or obligations backed by, pools of qualified loans.

(b) *Limitations.*—In providing credit enhancement for pools of qualified loans, the Mortgage Corporation shall ensure the following limitations are satisfied. The Mortgage Corporation shall:

(1) provide credit enhancement only with respect to an individual pool of qualified loans on application of a certified facility;

(2) provide credit enhancement only if a reserve equal to at least 10 percent of the principal amount of the loans constituting the pool has been established;

(3) in any case in which an originator has agreed to contribute to a reserve as provided in section 8.7, require the facility to establish the reserve in securities issued, guaranteed, or insured by an agency of the Federal government;

(4) in any case in which an originator has not agreed to contribute to a reserve, require the facility to establish the reserve in such manner as the Mortgage Corporation considers appropriate;

(5) require the facility to arrange for the reserve (exclusive of the earnings thereon), to be held for the benefit of holders of the mortgage-backed securities;

(6) in any case in which a facility or originator has not established a reserve, require the facility or originator to retain a 10 percent subordinated participation interest;

(7) require these reserves and subordinated participation interests must first be exhausted before any demand be made with respect to the Mortgage Corporation's credit enhancement;

(8) assure the timely receipt of principal and interest due to security holders only after exhaustion of such reserves and subordinated participation interests;

(9) require that a certified facility act in accordance with the standards of a prudent institutional lender to resolve loan defaults;

(10) provide that, to the extent that the certified facility receives proceeds of collateral, judgments, settlements, or guarantees with respect to a loan in the pool, the proceeds shall be first applied to repayment of any loan made by Treasury, and second, to reimburse the Mortgage Corporation for credit enhancement payments made to that pool;

(11) permit reserves to be reduced at times to provide for distribution of earnings to originators;

(12) not provide credit enhancement to a pool if it contains any single loan with a principal amount exceeding 5 percent of the total principal amount of the pool;

(13) in the case of each loan originated for a pool, provide credit enhancement only if the originator may retain the servicing of the mortgage; and

(14) provide credit enhancement only if each qualified loan has been sold to the certified facility without recourse to the originator.

(c) *Aggregate principal amounts of qualified loans.*—Beginning with the date of enactment of this Act, the Mortgage Corporation may provide credit enhancement for qualified loans with an aggregate principal amount not in excess of 2 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year, less all Farmers Home Administration agricultural real estate debt. During the second year, the Mortgage Corporation may provide credit enhancement for qualified loans with an additional principal amount not in excess of 4 percent. In the third year the amount is 8 percent, and thereafter the Mortgage Corporation may

provide credit enhancement without regard to the principal amount of the qualified loans enhanced.

8.7 Reserves and subordinated participation interests

(a) *Contributions.*—The certified agricultural mortgage marketing facility and the participating agricultural mortgage loan originators each may contribute a share of the 10 percent minimum reserve.

(b) *Distribution.*—With respect to each loan pool the certified facility shall distribute at least semiannually to originators any earnings on their contributions to the reserve, provided that the reserve shall not be reduced to less than 10 percent of the aggregate principal and accrued interest of the loans remaining in the pool and shall maintain separate loan loss accounting for each loan in those pools in which the originator has contributed to the reserve.

(c) *Losses.*—Losses attributed to an originator shall be absorbed by that originator's contribution to the reserve before the contributions of others to the reserve shall be used.

(d) *Subordinated participation interests.*—The rights of holders of subordinated participation interests to receive distributions with respect to the loans constituting the pool shall be subordinated as prescribed by the Mortgage Corporation to enhance the likelihood of regular receipt by the holders of participation interest in such pool of the full amount of the scheduled payments of principal and interest on loans constituting the pool.

(e) *Composition of reserves.*—The reserves required under this section, other than retained subordinated participation interests, shall be held in the form of Treasury securities or other securities issued, guaranteed, or insured by an agency of the United States Government.

8.8 Standards for qualified loans

Not later than 120 days after the appointment and election of the Board, the Mortgage Corporation, in consultation with originators, shall establish uniform underwriting, security appraisal, and repayment standards for qualified loans. Those standards shall not discriminate against small originators or small agricultural mortgage loans that are at least $50,000.

8.9 Exemption from restructuring and borrowers' rights provisions

Notwithstanding any other provision of law, sections 4.13(b), 4.14, 4.14A, 4.37, and 6.7 shall not apply to any loan included in a pool or trust of qualified loans backing securities for which the Mortgage Corporation has provided credit enhancement. The loan servicing standards established by the Mortgage Corporation shall be patterned after similar standards adopted by other Federally sponsored secondary market facilities.

8.10 Funding for credit enhancement; reserves of mortgage corporation

(a) *Credit enhancement.*—The Mortgage Corporation shall provide credit enhancement for securities representing interests in, or obligations backed by, pools of qualified loans through commitments

issued by the Mortgage Corporation providing for credit enhancement.

(b) *Credit enhancement fees.*—At the time a credit enhancement is issued, the Mortgage Corporation shall assess the certified facility a fee of not more than one-half percent of the amount of the credit enhancement with respect to the initial principal amount of each pool of qualified loans. Annually thereafter, the Mortgage Corporation may assess the certified facility a fee to be established by the Board of the Mortgage Corporation of not more than one-quarter of one percent. The Mortgage Corporation shall establish such fees based on the risks associated with such pool and shall take into account reserves maintained by qualified facilities and originators and the level of capital and reserves of the Mortgage Corporation.

(c) *Mortgage Corporation fees.*—The Mortgage Corporation may impose charges or fees in reasonable amounts in connection with the administration of the activities of the Mortgage Corporation under this title.

(d) *Reserves.*—As much of the fees collected under this section as are necessary shall be set aside by the Mortgage Corporation to establish an adequately funded reserve against losses arising out of its credit enhancement activities. Such reserve shall be used to fulfill the credit enhancement assurances of the Mortgage Corporation before the Mortgage Corporation borrows from the Secretary of Treasury under section 8.1(c).

8.11 Regulation, examination and report of condition

(a) This paragraph sets forth the scope of the regulatory authority of the Farm Credit Administration over the Corporation. This is a limited grant of regulatory power and is limited to the examination of the condition of, and the general regulation of the safe and sound performance of the powers, formations and duties vested in the Corporation. In particular, the Farm Credit Administration is instructed to consider the reduced levels of risk associated with appropriately structured secondary market transactions.

(b) *Examination.*—In accordance with the principles and procedures applicable to commercial corporate transactions, and under rules and regulations prescribed by the Farm Credit Administration, Farm Credit Administration examiners shall examine and audit the financial transactions of the Corporation at least annually.

(c) *Annual report of condition.*—Pursuant to Farm Credit Administration direction, the Corporation shall prepare and publish an annual report. The report shall include financial statements prepared in accordance with generally accepted accounting principles and shall be audited by an independent public accountant.

8.12 Securities in credit enhanced pools

(a) *Federal laws.*—Securities representing an interest in a pool of qualified agricultural mortgage loans that have received credit enhancement from the Mortgage Corporation shall be exempt from the registration laws of the Securities and Exchange Commission to the same extent as securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United

States. Such securities and interest thereon, however, are not guaranteed by the United States, do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof, and the securities shall so state.

The Mortgage Corporation shall be considered an agency, and any suits in which it is a party shall be deemed to be governed by Federal common law with district courts of the U.S. having original jurisdiction over all such actions. Nothing in this title is intended to expand the authority of a national bank, State bank, or bank holding company, or an affiliate, to deal in or underwrite securities.

(b) *State securities laws.*—Securities evidencing an interest in a pool of qualified agricultural mortgage loans that have obtained credit enhancement from the Corporation shall be exempt from state laws with respect to or requiring registration or qualification of securities or real estate to the same extent as securities issued or guaranteed as to principal and interest, by the United States or any agency or instrumentality thereof.

(c) *Authorized investments.*—(1) Securities requirements. Securities representing an interest in pools of qualified agricultural loans that have received credit enhancement from the Mortgage Corporation shall be authorized investments of any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any state to the same extent such organization is authorized to purchase, hold or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. The section also is intended to ensure that such securities shall receive treatment under ERISA as if they were United States securities. Such securities shall also be eligible for unlimited purchase, sale and underwriting by national banks.

(2) *State limitations on charges.*—To facilitate the orderly and necessary flow of long term loans and funds from agricultural lenders and facilities for agricultural loans, the provisions of law of any State expressly limiting the rate or amount of interest, discount points, finance charges, or other charges that may be charged, taken, received, or reserved by agricultural lenders or certified facilities shall not apply to any qualified loan made by an originator or a certified facility pursuant to this title.

(3) Notwithstanding any Federal, State, or local law (other than title 11 of the United States Code), an originator may provide by contract with the borrower for the settlement or extinguishment, or default, or any redemption, equitable, legal, or other right, title, or interest of the borrower in, any agricultural real estate or agricultural property that constitutes the security for an agricultural mortgage loan that is included in a pool of qualified loans for which credit enhancement is provided, and concerning the terms of repayment of such a loan on the sale of collateral securing the loan.

(4) *Nonapplicability of provisions.*—Paragraphs (1) and (2) shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity, or class thereof, in any State that, prior to the expiration of the 3-year period beginning on the date of enactment of this Act, enacts a law that specifically refers to this section and either prohibits or pro-

vides for a more limited authority to purchase, hold or invest in the securities. The enactment of this type law shall not affect the validity of any contractual commitment to purchase, hold or invest made prior thereto and shall not require the sale or other disposition of securities acquired prior to the effective date of the law.

Sec. 703

This section permits Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, Production Credit Associations, and Banks for Cooperatives to operate as originators and become certified as certified facilities under this title.

TITLE VIII—MISCELLANEOUS

SECTION 801. SALE OF RURAL DEVELOPMENT NOTES.

Section 1001 of the Omnibus Budget Reconciliation Act of 1986 (7 U.S.C. 1919a note) is amended by adding a new subsection.

Right of First Refusal.—After the conduct of a sale of a portfolio of notes or other obligations, the Secretary of Agriculture shall determine whether the issuer of any unsold note or other obligations desires to purchase the note or other obligation and, if so, hold open for 30 days an offer to sell the note or other obligation to the issuer at a price to be determined.

Determination of Offering Price.—The Secretary of Agriculture shall determine the price at which a note or other obligation shall be offered for sale under this subsection. Such price shall be determined by discounting the payment stream of such note or other obligation at the yield on the sale of the portfolio.

Prohibitions.—The Secretary shall not require the issuer of any unsold note or other obligation to be offered for sale under these rules to purchase any other such note or other obligation as a condition of the sale of any such note or other obligation to the issuer. The Secretary shall offer notes or other obligations for sale to the issuers thereof without regard to the manner in which such issuers intend to finance the purchase of such notes or other obligations.

SEC. 4.15. ASSOCIATION DIRECTORS.

Each production credit association and each Federal land bank association shall elect a board of directors that shall consist of members selected from citizens of the United States, one of whom shall not be a borrower from, a shareholder in, or an officer, employee, or agent of any institution of the Farm Credit System.

The bylaws of each association shall prescribe the procedures under which the directors shall be nominated and elected, including procedures requiring the election of the outside director by the other members of the board of directors, and the number, term of office, and qualifications required of directors.

SECTION 804. PLACEMENT OF INVENTORIED PROPERTY INTO CONSERVATION RESERVE.

In General.—Section 1235(a) of the Food Security Act of 1985 (16 U.S.C. 3835(a)) is amended by adding a new paragraph.

In the case of any highly erodible cropland that is placed in the conservation reserve, the Secretary shall make payments only to family farmers who purchase or lease such cropland and who enter into a contract under these provisions.

If the Secretary receives contract offers for participation in this program from qualified owners or operators and family farmers who satisfy these requirements, the Secretary shall give priority to the offers submitted by owners or operators who satisfy these requirements.

SECTION 805. TRANSITIONAL AUTHORITY.

(a) *Regulations.*—The Farm Credit Administration Board shall issue regulations as the Board considers necessary for the orderly and efficient implementation of this Act and the amendments made by this Act.

(b) *Current Provisions.*—Except as provided in subsection (a), the provisions of the Farm Credit Act of 1971 (as it existed before the amendments made by this Act) that are relevant to current regulations of the Farm Credit Administration Board governing the Farm Credit System shall remain in effect until such provisions are revoked, superseded, amended, or modified by regulations issued pursuant to the Farm Credit Act of 1971 (as amended by this Act).

SECTION 806. REGULATIONS.

To the extent that the Farm Credit Administration is required to issue regulations under this Act such regulations shall be issued within one year after the date of enactment of this Act, unless otherwise provided by the Act.

COST ESTIMATE

In accordance with paragraph 11(a) of rule XXVI of the Standard Rules of the Senate, the Committee estimates that the enactment of S. 1665 would cause some costs to be incurred by the Federal Government.

In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 16, 1987.

Hon. PATRICK J. LEAHY,
Chairman, Committee on Agriculture, Nutrition, and Forestry,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1665, the Farm Credit Act Amendments of 1987.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes.

Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 1665.
2. Bill title: Farm Credit Act Amendments of 1987.
3. Bill status: As ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, November 4, 1987.

4. Bill purpose: S. 1665 would establish a mechanism for assistance to the Farm Credit System (FCS), provide for reorganization of the FCS, and authorize the establishment of a secondary market for agricultural loans. The bill would also assist farm borrowers by specifying borrower rights for loans made by the Farm Credit System and the Farmers Home Administration (FmHA).

The FCS is a multi-level cooperative of banks and credit associations, established to provide capital to the agricultural sector. The FCS consists of approximately 150 Production Credit Associations and 230 Federal Land Bank Associations at the local level; 12 Federal Land Banks, 12 Federal Intermediate Credit Banks, and 12 Banks for Cooperatives—and a Central Bank for Cooperatives—on a district Level; and four organizations that function at the national level: The Farm Credit Corporation of America, the Farm Credit System Capital Corporation, the Farm Credit Bank Funding Corporation, and the Farm Credit Council. In addition, the U.S. Farm Credit Administration (FCA), a government agency, regulates the Farm Credit System.

Enactment of S. 1665 would create several new FCS institutions at the national level, and could result in changes in the composition of the FCS at the district and local level. Enactment would also provide explicit federal backing of FCS securities. This backing would take the form of federal guarantees of certain new FCS securities, and federal outlays for the payment of FCS assistance in amounts equal to all or part of the interest on those securities. The federally guaranteed securities would be issued by a new FCS institution: the FCS Financial Assistance Corporation. The bill defines this corporation as an institution of the federally sponsored Farm Credit System. The assistance corporation would provide capital to FCS institutions that are experiencing financial difficulty. This capital assistance would consist of payments from a Farm Credit Assistance Fund, financed by uncollateralized bonds, notes, or other obligations, guaranteed by the Secretary of the Treasury.

Under Title I of S. 1665, the Financial Assistance Corporation would be established with a borrowing limit of $2.8 billion prior to January 1, 1989, and an aggregate borrowing limit of $4 billion after January 1, 1989. The assistance corporation would provide funding to troubled FCS institutions subject to certification for assistance by the FCS Assistance Board, also created by Title I of the bill. The Assistance Board would consist of five members, including the Secretary of the Treasury, the Secretary of Agriculture, and the Chairman of the Federal Reserve Board (or their designees). Two additional members would be appointed by the President.

Assistance to a particular institution would commence when the book value of the institution's stock held by its borrowers falls below 75 percent of its original value. When this trigger point is reached the Financial Assistance Corporation would be authorized to sell a special series of uncollateralized bonds backed by a government guarantee. The Assistance Board would certify FCS institutions' eligibility for assistance, thereby authorizing such institutions to issue preferred stock that would be purchased by the assistance corporation from the proceeds of its bond issues. The Assistance Board would also play a role in FCS loan restructuring by

establishing a National Special Asset Council to monitor compliance with restructuring requirements of the bill.

In addition to the Assistance Fund, Title I would also establish a Financial Assistance Corporation Trust Fund, to consist of Treasury securities purchased with about $250 million in funds obtained through a one-time stock purchase by FCS institutions. The trust fund would be used for the payment of principal of Financial Assistance Corporation obligations if FCS institutions are unable to pay their share of the principal when the obligations mature 15 years after issuance. The U.S. Treasury would guarantee 100 percent of the principal for the assistance corporation's debt. However, the maximum federal liability for the assistance corporation debt would be less than 100 percent, because the corporation would use the capital retained in the trust fund before triggering use of the Federal guarantee.

From fiscal year 1989 through fiscal year 1998, the Treasury would make annual payments to the Assistance Fund. For the first five years after enactment, these payments would be equal to interest payments on the uncollateralized bonds sold by the assistance corporation. FCS institutions would be responsible for approximately 50 percent of these interest costs during the second five-year period after enactment and for 100 percent of these interest costs after 10 years. Up to $2 billion of payments made by the Treasury would not be subject to repayment by the FCS. Title I authorizes appropriations for the payment of this assistance.

Title I also would require the refunding of third quarter 1986 assessments made by the FCS Capital Corporation. The FCS Capital Corporation was established by the 1985 Farm Credit Act to oversee the management of non-performing loans and acquired property within the system, and was empowered to assess system institutions' capital stock. The third quarter 1986 assessment totaled about $122 million.

Title II of the bill provides for restructing of the Farm Credit System by granting expanded authority for the merger of FCS banks and associations. In addition, Title II would establish, in 1992, an FCS Central Reserve Account that would be funded by premium assessments on FCS institutions, based on the outstanding balance of performing and non-accrual loans for each such institution. The reserve account would serve as an insurance fund for the system, providing assistance to FCS institutions to satisfy individually-issued obligations that institutions cannot satisfy independently. In addition, the reserve account could be used by the Financial Assistance Corporation to pay interest and principal due on the corporation's uncollateralized debt. Title II also provides for the protection and retirement of borrower stock in the Farm Credit System.

Title III of S. 1665 provides for the establishment of minimum capital standards for FCS institutions, and for the adoption of capitalization bylaws by each system institution.

Title IV specifies FCS borrowers' rights with respect to: (1) disclosure of loan information by FCS institutions, (2) the administration of loans to family farmers—including provisions for restructuring of distressed loans, (3) regulation of programs for differential inter-

est rates, and (4) the defaulted borrower's right of first refusal on the sale of FCS-acquired real estate (as a result of loan foreclosure).

Title V of the bill contains guidelines for state mediation programs for Farm Credit System borrowers, and provides for financial assistance to states for administering such programs. Qualifying states would be eligible for grants from the Secretary of Agriculture, not to exceed $750,000 per year per State. This assistance would take the form of matching grants to States, equal to not more than 50 percent of the cost of the mediation programs. Title V authorizes annual funding of $7.5 million for these matching grant programs in each fiscal year over the 1988–1991 period.

Title VI contains several provisions that would affect farmers who borrow from the Farmers Home Administration (FmHA). These provisions include a new debt restructuring program for delinquent borrowers, the establishment of specific borrowers' rights, homestead protection, release of income for living and operating expenses, guidelines for the disposition of inventory lands held by FmHA, and a new program that would provide financial assistance to help certain farmers purchase land from the FCS inventory.

Title VII establishes a Federal Agricultural Mortgage Corporation (FAMC) to provide credit enhancement for agricultural mortgage loans. The FAMC would provide a secondary market for farm real estate mortgages. It would be backed by a Federal line of credit of up to $1.5 billion. The FAMC could use this Treasury borrowing authority for credit enhancement after a 10 percent reserve established for insured funds has been exhausted.

Title VIII contains miscellaneous provisions for the transition from regulation of the FCS under current law to the implementation of FCS changes under S. 1665. This title also contains provisions allowing highly erodible land administered by credit institutions to be eligible for inclusion in the Conservation Reserve.

5. Estimated Cost to the Federal Government: The proper budgetary treatment of the Farm Credit System assistance program has been difficult to determine. The Office of Management and Budget (OMB), after extensive review and a number of modifications to the bill, has concluded that the Financial Assistance Corporation would not be a government entity and would be treated as a government-sponsored enterprise, part of the Farm Credit System. As a result, the issuance of debt obligations by the assistance corporation would not be considered Federal borrowing and the disbursement of up to $4 billion in assistance to FCS institutions would not be considered Government outlays. This cost estimate reflects the OMB decision.

This budgetary treatment is a very close call. It is based largely on nominal compliance with the criterion adopted in 1967 by the President's Commission on Budget Concepts that "privately-owned" entities should not be included in the Federal budget. In this case, the "private" ownership stems from an assessment on FCS institutions expected to produce about $250 million for the purchase of stock in the Financial Assistance Corporation. The private nature of the corporation is questionable, however, for several reasons. The assistance corporation would be created by the Federal Government to carry out a perceived governmental responsibility—to assist the Farm Credit System. Its activities would be controlled by the Federal Government, and the financial risk associated with its

activities would be borne almost entirely by the Government, through its guarantee of principal and interest on up to $4 billion in uncollateralized assistance corporation bonds. Thus, although the assistance corporation has some attributes of private ownership and will be treated as such for the Federal budget, a case can be made that the corporation is essentially a governmental entity and should be included in the budget. If it were, outlays from this bill would be about $1.3 billion in fiscal year 1988 and would total $3.5 billion over the 1988–1992 period.

While funding has been authorized for assistance to the FCS under current law, no appropriations have yet been provided. Thus, there is no basis for comparing the amount of aid that might be provided under existing law with the amount that would be provided under S. 1665. The following table therefore shows the CBO estimate of total federal spending under S. 1665. Assistance to the FCS and to states (for loan mediation programs) would require appropriations, while the costs of the bill's provisions relating to borrowers from the Farmers Home Administration (FmHA) constitute direct spending.

ESTIMATED BUDGET IMPACT OF S. 1665, THE FARM CREDIT ACT AMENDMENTS OF 1987

[By fiscal year, in millions of dollars]

	1988	1989	1990	1991	1992	Total 1988–1992
REQUIRING APPROPRIATIONS ACTION						
Farm Credit System Assistance:						
Estimated authorization level	---	190	180	210	240	820
Estimated outlays	---	190	180	210	240	820
State Mediation Program Grants:						
Authorization level	8	8	8	8	---	30
Estimated outlays	6	8	8	8	2	30
DIRECT SPENDING						
Farmers Home Administration:						
Estimated budget authority	90	80	140	110	30	450
Estimated outlays	90	80	140	110	30	450

The amount of assistance required by the FCS is highly sensitive to changes in the financial conditions of the agricultural sector and their effect on the system. The above figures for FCS assistance represent CBO's best point-estimate of the amounts of Treasury payments that would be required by the Financial Assistance Corporation to service its debt over the 1988–1992 period. The five-year total of estimated assistance is approximately $820 million, based on CBO's projection that the assistance corporation would need to issue about $3.1 billion worth of obligations. If the maximum of $4 billion of obligations is issued, Treasury payments would total about $970 million over the 1988–1992 period; on the other hand, if the financial condition of the system requires the issuance of only $2.5 billion worth of bonds, Treasury payments would be about $700 million over the five-year period.

The costs of this bill fall within budget function 350.

Basis of Estimate.—The primary budget impact of S. 1665 would come from assistance to the Farm Credit System. Changes in the administration of agricultural loans made by the Farmers Home

Administration and the authorization of matching grants to States for farm loan mediation programs would also result in Federal expenditures.

ASSISTANCE TO THE FARM CREDIT SYSTEM

The amount of assistance provided to the Farm Credit System would be determined by the system's losses to net earned worth—that is, its capital shortfall. CBO estimates that, in the absence of S. 1665, the Farm Credit System would experience a cumulative capital shortfall through calendar year 1992 of approximately $2.8 billion, measured on the basis of Generally Accepted Accounting Principles (GAAP).

Under S. 1665, about $122 million in third quarter 1986 assessments levied by the Capital Corporation would be refunded, the FCS institutions would make one-time purchases of stock in the Financial Assistance Corporation. (As a result of the 1986 assessment refund—about $122 million—the cumulative GAAP shortfall through calendar year 1992 would fall from an estimated $2.8 billion to $2.7 billion) After adjusting the December 1986 capital positions of the recipient institutions for the assessment refund, any earned surplus in excess of 5 percent for banks (Federal Land Banks, Federal Intermediate Credit Banks, and Banks for Cooperatives) or 13 percent for associations (Production Credit Associations and Federal Land Bank Associations) would be extracted for the purchase of assistance corporation stock. CBO estimates that about $250 million would be generated in this way. Since only the financially secure banks would pay into the fund, no increase in the cumulative GAAP shortfall would be expected as a result of the stock purchases.

In the absence of the other legislative changes included in this bill, CBO estimates that the Financial Assistance Corporation would have to issue $2.6 billion of uncollateralized bonds through fiscal year 1992, to assist FCS institutions when the value of their borrower stock falls below 75 percent of its original value. For that amount of debt, interest payments would be an estimated $735 million through fiscal year 1992, the federal payments to the assistance corporation would be equal to the interest costs, assuming appropriation of the necessary funds. This estimate assumes enactment of the bill by January 1988 and issuance of the first assistance corporation bonds by March 1988.

A number of provisions in the bill would increase the financial needs of the FCS, and would raise total borrowing by the assistance corporation to an estimated $3.1 billion, with federal payments to cover interest costs totaling $820 million over the period of fiscal years 1988 through 1992. These provisions are discussed below.

Voting Stock, Origination Fees, and Interest Rates.—Under S. 1665, FCS institutions should have a greater degree of latitude in the pricing of loans. The bill requires that all borrowers have voting stock worth the lesser of 2 percent of the value of the loan or $1,000. It also states that banks shall not have a minimum or maximum stock purchase requirement for new loans. Finally, under S. 1665, FCS institutions would be allowed to charge origination fees on their loans. As a result, it is probable that borrowers

from the FCS would be offered trade-offs between interest rates, origination fees, and borrower stock. For example, a borrower could be offered a lower rate of interest if he paid an origination fee and/or purchased additional borrower stock. CBO assumes that competitive pressures would limit the ability of the FCS to impose origination fees and that the amount of borrower stock sold would fall over time. As a result, CBO estimates that the cumulative amount of bonds required under the bill would increase by nearly $200 million, and Treasury outlays for assistance payments would increase by about $25 million over the 1988–1992 period.

Borrowers' Rights.—The borrowers' rights provisions of S. 1665 include requirements that the Farm Credit System conform to truth-in-lending standards, restructure problem loans if that is the least-cost alternative, and provide owners upon whom the FCS has foreclosed with the right of first refusal to lease or repurchase their former properties. Conforming to the truth-in-lending standards may result in some relatively small administrative expenses. Likewise, CBO does not expect the loan restructing provisions of S. 1665 to create large costs. Lenders would restructure loans if this action is the least-cost alternative even without a legislative requirement that they do so. The restructuring provisions of the bill would have some additional expenses associated with the decision review process.

Providing owners who lost property through foreclosure with the first option on repurchasing or leasing that property would create additional costs for the system. Most of the additional costs would be associated with the exercise of the lease option (which would generate less income than the expenses incurred by the system) and the additional time that non-income generating assets would spend in the FCS portfolio. Under this bill, borrowers in financial difficulty must receive notification of intent to begin foreclosure proceedings 14 days in advance of FCS actions; once foreclosure has been completed they must be notified 15 days before their property is to be offered for sale. Then, they would have 15 days to make a counter-offer, and must receive notification of acceptance or rejection of their counter-offer within 15 days. All of these requirements would increase the time necessary to complete foreclosure and the period that acquired properties remain in the FCS portfolio. CBO estimates that borrowers' rights provisions would increase system expenses by approximately $500 million through 1992. This increase would increase bond sales by approximately $350 million and Government assistance payments by $65 million over the five-year period.

The Reserve Account.—Beginning in 1992, the FCS would establish a reserve account that will be used to satisfy obligations to bondholders when the issuing institution is unable to do so. Because the premiums for this insurance fund would not begin to be collected until 1992, this portion of the legislation will have a minor impact on the cost of the bill in the first five years. CBO estimates that the 1992 premium would be approximately $90 million, and that it would result in less than $30 million in additional bond sales and about $5 million more in Government assistance payments in 1992.

Farm Credit System Restructuring.—S. 1665 would allow institutions within the FCS increased ability to merge operations. Specifically, this bill would allow the merger of virtually any combination of system entities if the merger is approved by a majority of the stockholders in both merging institutions, the respective boards of directors, and the Farm Credit Administration. Because some overhead may be eliminated, duplicate functions reduced, and some economies of scale realized, CBO estimates that these provisions would reduce bond sales by about $60 million and government assistance payments by about $10 million over the 1988–1992 period.

Minimum Capital Requirements.—The bill calls for the Farm Credit Administration to define minimum capital requirements for the FCS that would be phased in over five years. However, the bill also prohibits an institution from being punished for failure to attain these prescribed levels during the transition period. As a result, CBO estimates that the minimum capital standards would have no impact on the cost of the bill over the 1988–1992 period. Since no penalties are imposed for noncompliance, CBO assumes that assistance would not be linked to attainment of minimum capital levels.

Secondary Markets for Agricultural Mortgages.—S. 1665 authorizes the creation of a secondary mortgage market for agricultural loans that would nominally be a part of the FCS. The secondary market is designed to enable lenders to provide fixed-rate real estate loans, enhance competitiveness in agricultural lending markets, and increase the supply of credit for agriculture. For several reasons, CBO does not expect that the FCS would lose much business to the proposed secondary market. First, the cost of funds raised in the secondary market would likely be greater than the FCS' cost of funds. Second, the cost of borrowing from the FCS should fall as greater efficiencies in credit delivery are achieved, borrower stock requirements fall, and marginal cost pricing of loans is adopted. Finally, the underwriting standards required for this market would probably be sufficiently strict to preclude all but the most financially sound farm borrowers. The bulk of farmers would not qualify for this market. CBO estimates that the secondary market would neither increase nor decrease bond sales by more than $50 million over the next five years.

STATE MEDIATION PROGRAMS

Under Title V, a State would be eligible for Federal financial assistance if the Secretary of Agriculture determines that the State has a farm loan mediation program that meets certain requirements.

The Secretary would provide 50 percent of the cost of a farm loan mediation program for qualifying States, though no State could receive more than $750,000 per year. Section 506 authorizes appropriations of $7.5 million per year over the 1988–1991 period. CBO estimates that Title V would increase annual outlays and budget authority by an amount equal to the annual authorization ceiling if appropriations are provided.

FARMERS HOME ADMINISTRATION LOANS

Title VI would make several changes in FmHA procedures dealing with the treatment of delinquent farm borrowers. CBO estimates these changes would result in increased outlays and budget authority of about $450 million for the Agricultural Credit Insurance Fund (ACIF) over the 1988–1992 period. Costs would occur as a result of income release, loan restructuring, and interest rate buy-down provisions, and increased administrative expenses.

Income Release.—Section 608 would change FmHA provisions governing release of borrowers income for their living and operating expenses. Under current law, FmHA "releases" or allows delinquent borrowers to keep a portion of the proceeds generated from the sale of their farm products equal to their estimated living and farm operating expenses for the coming year. Commodity program payments to farm borrowers also qualify as releable income under current law. Such releases are essentially new short-term loans to delinquent borrowers. Currently, FmHA halts releases when the agency "accelerates" or notifies the borrower that full payment of outstanding loans is due. Acceleration freezes the borrowers' assets, typically until liquidation procedures are completed. FmHA garnishes any commodity program payments owed by the Government to an accelerated borrower.

Section 608 would extend release provisions to include borrowers accelerated between November 1, 1985 and May 7, 1987 if such borrowers continue to be actively engaged in farming as of October 30, 1987. Section 608 would limit releases to qualifying borrowers to no more than $18,000 per year. Using assumptions based on FmHA state office surveys, CBO estimates that 5,900 accelerated borrowers would qualify for additional releases. Survey results imply that about 3,400 of these borrowers would be entitled to receive Government commodity program payments averaging $10,900 that would otherwise be withheld, resulting in costs of $34 million in 1988 and $13 million in 1989. (Costs would drop in 1989 because we assume that half of these borrowers would qualify for restructuring under the bill and drop out of acceleration status.) In addition, CBO estimates that about 500 borrowers would decide not to convey their farms to the government voluntarily and would choose rather to take advantage of the income release provision. Assuming $30,000 per borrower of lost liquidation proceeds, this would result in additional costs of $8 million in both 1988 and 1989. Finally, it is estimated that half of the 5,900 affected borrowers would qualify for restructuring and avoid liquidation at least temporarily. Additional costs of $80 million in 1990 and $50 million in 1991 would occur from lower net liquidation proceeds as a result of restructuring. Liquidations delayed until 1992 would generate net receipts of about $40 million in that year, and restructuring is projected to bring in additional payments of about $75 million over the 1989–1992 period. Overall, CBO estimates Section 608 would increase outlays and budget authority of the Agricultural Credit Insurance Fund of FmHA by about $70 million over the 1988–1992 period.

Loan Restructuring.—Section 613 would require FmHA to restructure loans so as to allow delinquent borrowers to continue farming operations, if FmHA estimates that the present value of

the repayment stream of a borrower's restructured loan is greater than the net proceeds obtainable through liquidation. The estimate of the present value of the repayment stream of a borrower's restructured loan is to be based on a discount rate equal to the 90-day Treasury bill rate. If restructuring is required, the bill would mandate the Secretary to give priority to principal and interest write-downs. This provision would likely reduce greatly the chances of foreclosure or other type of liquidation facing delinquent borrowers and result in restructured FmHA loans involving significant principal and interest write-offs.

The budget impact of this provision on currently delinquent borrowers is highly uncertain. FmHA is likely to forego receipts from the sale of assets obtained through liquidation since these restructured loans would allow borrowers to avoid liquidation. On the other hand, FmHA would probably receive more loan repayments than it currently receives from delinquent borrowers. Over a several year period, these effects are likely to net out—though there may be a budget impact in certain years. Because of the uncertainty as to how FmHA would implement this provision for currently delinquent borrowers, CBO is unable to estimate its budgetary consequences with any precision.

However, the restructuring provisions also provide significant incentives for borrowers currently on their loans to become delinquent and qualify for a principal or interest write-down. Roughly $13 billion or half of the total FmHA farmer direct loan portfolio was current as of September 1987 (according to the Department of Agriculture). CBO estimates that borrowers holding 5 percent of this FmHA debt, or $650 million, would successfully qualify for restructuring under the provisions of the bill. FmHA would lose an estimated $75 million in loan repayments from this group during 1988 and 1989 as they become delinquent and $30 million per year in subsequent years. This estimate assumes land loans are 75 percent of this debt and operating loans are the remainder. We assume restructuring would reduce their annual payments by 50 percent. CBO estimates that Section 613 would increase ACIF budget authority and outlays by $165 million over the 1988–1992 period.

Interest Rate Buy-Down.—Section 611 creates a new three-year program to help certain farmers purchase land in FCS inventory. Under the program, qualifying farmers could, at the discretion of the Secretary of Agriculture, receive a voucher to reduce by up to four percentage points the interest rate on a FmHA-guaranteed loan to purchase FCS land. (The farmer would be required to make a minimum downpayment of 15 percent at the beginning of 1988.) The program would allow up to $250 million in land sales per year for three years. Section 611 allows the new program to use unobligated balances from the current interest rate buy-down program (roughly $460 million). This section also extends through 1993 the current program scheduled to end in 1988. CBO estimates the new program would increase ACIF budget authority and outlays by $9 million in 1988, $17 million in 1989, and $26 million per year over the 1990–1992 period. Extension of the old interest rate buy-down program would increase ACIF budget authority and outlays by $15

million per year over the 1989–1992 period, assuming the same level of activity as in 1987.

Administrative Expenses.—CBO estimates that several sections of Title VI would increase FmHA administrative expenses by about $10 million per year because of greater staff workload in loan servicing, secondary market development, and creation of a national appeals division.

6. Estimated cost to State and local governments: Qualifying states may spend up to $7.5 million per year on loan mediation programs for FCS borrowers over the period of fiscal years 1988 through 1991. Any state expenditure up to this level would be matched by federal grants, as authorized in the bill.

7. Estimate comparison: None.

8. Previous CBO estimate: On September 15, 1987, the Congressional Budget Office prepared a cost estimate for H.R. 3030, the Agricultural Credit Act of 1987, as ordered reported by the House Committee on Agriculture on August 6, 1987. The House bill would also provide assistance to the Farm Credit System and establish new procedures for FmHA loans. The House and Senate bills are substantially different, and the cost estimates reflect those differences. The estimate for S. 1665 also incorporates recent data on the condition of the Farm Credit System that was not available when the estimate was prepared for H.R. 3030.

9. Estimate prepared by: Peter Fontaine (226–2860), David Trechter (226–2946), and Andrew Morton (226–2860).

10. Estimate approved by: C.G. Nuckols (for James L. Blum Assistant Director for Budget Analysis).

Regulatory Impact Statement

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee made the following evaluation of the regulatory impact which would be incurred in carrying out S. 1665.

The Farm Credit System Assistance Board, created by this Act, will not be subject to regulation by the Farm Credit Administration and will be responsible for developing its own rules and regulations without regard to the provisions of the Administrative Procedure Act. In addition to rules for the conduct of its own business, the Assistance Board will adopt regulations concerning the eligibility of institutions to issue preferred stock to the Financial Assistance Corporation, as well as procedures under which the Corporation will provide funds to the institutions certified to issue the preferred stock. The Assistance Board will also develop rules concerning the restructuring of borrower debt and the internal review process regarding that restructuring. This regulatory authority will end with the termination of the Assistance Board in 1992.

The Farm Credit Administration (FCA) remains the principal regulator of the Farm Credit System and is given some additional regulatory responsibilities under this Act. FCA will regulate the assessment of premiums for the Farm Credit System Central Reserve Account and the manner in which such funds are held by the Account. FCA will also regulate the consolidation of powers and obligations or merging institutions, and the circumstances under which

shareholders may petition to organize a separate association following a merger.

Other FCA regulatory responsibilities include the establishement of minimum capital adequacy standards for System institutions, promulgation of standards ensuring timely disclosure to borrowers of terms and conditions affecting their loan position and rights as borrowers and development of the rules to effectuate and require good faith conduct by System institutions in the loan mediation programs.

The Department of Agriculture is charged with issuing regulations necessary to implement provisions affecting the Farmers Home Administration (FmHA). The Secretary will issue regulations concerning the conduct of county elections, the right of a previous owner to repurchase property foreclosed upon by FmHA, and release of security income. The Secretary must also create criteria for the restructuring of troubled FmHA loans. With respect to the FmHA secondary loans market, the Secretary must collect information and report annually to Congress concerning terms and conditions of marketed loans.

The Federal Agricultural Mortgage Corporation, which is established to administer the secondary loans market for Farm Credit System and private agricultural lenders, is an independent regulatory entity. The Corporation must issue standards concerning certification of loan poolers, as well as uniform underwriting, security and repayment standards. The Corporation must also enter into agreement with the Secretary of the Treasury regarding terms and conditions of a $1.5 billion start up loan. The Comptroller General is assigned the responsibility of studying the Corporation's implementation of the secondary market title and reporting to Congress no later than two years after enactment.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

The Farm Credit Act of 1971

* * * * * * *

TITLE I—FEDERAL LAND BANKS AND ASSOCIATIONS

Part A—Federal Land Banks

Sec. 1.3. Establishment; Title; Branches.—The Federal land banks established pursuant to section 4 of the Federal Farm Loan Act, as amended, shall continue as federally chartered instrumentalities of the United States. Their charters or organization certificates may be modified from time to time by the Farm Credit Administration, not inconsistent with the provisions of this title, as may be necessary or expedient to implement this Act. Unless an existing Federal land bank is merged with one or more other such banks under [section 4.10] *title VII* of this Act, there shall be a

Federal land bank in each farm credit district. It may include in its title the name of the city in which it is located or other geographical designation. When authorized by the Farm Credit Administration, it may establish such branches or other offices as may be appropriate for the effective operation of its business.

SEC. 1.4. CORPORATE EXISTENCE; GENERAL CORPORATE POWERS.—Each Federal land bank shall be a body corporate and, subject to regulation by the Farm Credit Administration, shall have power to—

* * * * * * *

(23) Operate as an originator and to become certified as a certified facility under title VIII.

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SEC. 1.7. INTEREST RATES AND OTHER CHARGES.—(a) Loans made by a Federal land bank shall bear interest at a rate or rates, and on such terms and conditions, as may be determined by the board of directors of the bank from time to time. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the land bank associations, and providing services to stockholders and members. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

(b)(1) A bank shall not implement a differential interest rate program for loans by members of any Federal land bank association unless the Board of Directors of such an association approve such a program.

(2) For purposes of this section, a differential interest rate program shall be any program under which different rates of interest are charged on loans made to producers based on the creditworthiness of the borrower, the type of agriculture involved, or any other factors.

* * * * * * *

[SEC. 1.9. SECURITY.—Loans originated by a Federal land bank or in which it participates with a lender which is not a Farm Credit System institution shall not exceed 85 per centum of the appraised value of the real estate security, or such greater amount, not to exceed 97 per centum of the appraised value of the real estate security, as may be authorized under regulations of the Farm Credit Administration for loans guaranteed by Federal, State, or other governmental agencies, and shall be secured by first liens on interest in real estate of such classes as may be approved by the Farm Credit Administration. The value of security shall be determined by appraisal under appraisal standards prescribed by the bank and approved by the Farm Credit Administration, to adequately secure the loan. However, additional security may be required to supplement real estate security, and credit factors other than the ratio between the amount of the loan and the security value shall be given due consideration.]

SEC. 1.9. FEDERAL LAND BANK LOAN SECURITY.—(a) MAXIMUM LEVEL OF LOANS—

(1) IN GENERAL.—Loans originated by a Federal land bank, or in which a Federal land bank participates in with a lender that is not a System institution, shall not exceed 85 percent of the appraised value of the real estate security, except as provided for in paragraphs (2) and (3).

(2) REGULATION.—The Farm Credit Administration may, by regulation, require that loans not exceed 75 percent of the appraised value of the real estate security.

(3) GUARANTEED LOANS.—If the loan is guaranteed by Federal, State, or other governmental agencies, the loan may not exceed 97 percent of the appraised value of the real estate security, as may be authorized under regulations of the Farm Credit Administration.

(b) SECURITY.—All loans originated or participated in by a bank under this section shall be secured by first liens on interests in real estate of such classes as may be approved by the Farm Credit Administration.

(c) VALUE OF SECURITY.—To adequately secure the loan, the value of security shall be determined by appraisal under appraisal standards prescribed by the bank and approved by the Farm Credit Administration.

(d) ADDITIONAL SECURITY.—Additional security for any loan may be required by the bank to supplement real estate security. Credit factors, other than the ratio between the amount of the loan and the security value, shall be given due consideration.

(e) FINANCIAL STATEMENT.—Each Federal land bank shall require a financial statement from each borrower at least once every 3 years, or during such shorter period of time as may be required under regulations of the Farm Credit Administration.

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PART B—FEDERAL LAND BANK ASSOCIATIONS

* * * * * * *

SEC. 1.14 BOARD OF DIRECTORS.—Each Federal land bank association shall elect from its voting shareholders a board of directors of such number, for such terms, in such manner, and with such qualifications as may be required by its bylaws.

SEC. 1.15 GENERAL CORPORATE POWERS.—Each Federal land bank association shall be a body corporate and, subject to supervision of the Federal land bank for the district and the regulation of the Farm Credit Administration, shall have the power to—

* * * * * * *

(22) Operate as an originator and to become certified as a certified facility under title VIII.

* * * * * * *

TITLE II—FEDERAL INTERMEDIATE CREDIT BANKS AND PRODUCTION CREDIT ASSOCIATIONS

PART A—FEDERAL INTERMEDIATE CREDIT BANKS

SEC. 2.0 ESTABLISHMENT; BRANCHES.—The Federal intermediate credit banks established pursuant to section 201(a) of the Federal Farm Loan Act, as amended, shall continue as federally chartered instrumentalities of the United States. Their charters or organization certificates may be modified from time to time by the Farm Credit Administration not inconsistent with the provisions of this title as may be necessary or expedient to implement this Act. Unless an existing Federal intermediate credit bank is merged with one or more other such banks under [section 4.1] *title VII* of this Act, there shall be a Federal intermediate credit bank in each farm credit district. It may include in its title the name of the city in which it is located or other geographical designation. When authorized by the Farm Credit Administration, it may establish such branches or other offices as may be appropriate for the effective operation of its business.

SEC. 2.1. CORPORATE EXISTENCE; GENERAL CORPORATE POWERS.—Each Federal intermediate credit bank shall be a body corporate and, subject to regulation by the Farm Credit Administration, shall have power to—

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(21) Operate as an originator and to become certified as as certified facility under title VIII.

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PART B—PRODUCTION CREDIT ASSOCIATIONS

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SEC. 2.11. BOARD OF DIRECTORS.—Each production credit association shall elect from its voting members a board of directors of such number, for such terms, with such qualifications, and in such manner as may be required by its bylaws.

SEC. 2.12. GENERAL CORPORATE POWERS.—Each production credit association shall be a body corporate and, subject to supervision by the Federal intermediate credit bank for the district and regulation by the Farm Credit Administration, shall have power to—

* * * * * * *

(21) Operate as an originator and become certified as a certified facility under title VIII.

* * * * * * *

SEC. 2.15. SHORT- AND INTERMEDIATE-TERM LOANS; PARTICIPATION; OTHER FINANCIAL ASSISTANCE; TERMS; CONDITIONS; INTEREST, SECURITY.—(a) Each production credit association, under standards prescribed by the board of directors of the Federal intermediate credit bank of the district, may make, guarantee, or participate with other lenders in short- and intermediate-term loans and other similar financial assistance to (1) bona fide farmers and ranchers and the producers or harvesters of aquatic products, for agricultural or

aquatic purposes and other requirements of such borrowers, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products: *Provided,* That the borrower's operations shall supply at least 20 per centum, or such larger per centum that is required by the supervising bank under regulations of the Farm Credit Administration, of the total processing or marketing for which financing is extended, (2) rural residents for housing financing in rural areas under regulations of Farm Credit Administration, and (3) persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs. Rural housing financed under this title shall be for single-family, moderate-priced dwellings and their appurtenances not inconsistent with the general quality and standards of housing existing in, planned or recommended or the rural area where it is located. The aggregate of such housing loans in an association to persons other than farmers or ranchers shall not exceed 15 per centum of the outstanding loans at the end of its preceding fiscal year except upon prior approval by the Federal intermediate credit bank of the district. The aggregate of such housing loans in any farm credit district shall not exceed 15 per centum of the outstanding loans of all associations in the district at the end of the preceding fiscal year. For rural housing purposes under this section the term "rural areas" shall not be defined to include any city or village having a population in excess of 2,500 inhabitants. Each association may own and lease, or lease with option to purchase, to stockholders of the association equipment needed in the operations of the stockholder.

(b) Loans authorized in subsection (a) hereof shall bear such rate or rates of interest as are determined under standards prescribed by the board of the bank subject to the provisions of section 4.17 of this Act, and shall be made upon such terms, conditions, and upon such security, if any, as shall be authorized in such standards. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers, at the lowest reasonable cost on a sound business basis, taking into account the cost of money to the association, necessary reserves and expenses of the association, and services provided to borrowers and members. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan in accordance with the rate or rates currently being charged by the association. Such standards may require prior approval of the bank on certain classes of loans; and may authorize a continuing commitment to a borrower of a line of credit.

(c) In any case in which one or more production credit associations merge with, or assign lending authority to a Federal intermediate credit bank responsible for the district involved, loans made, guaranteed, or participated in under subsection (a)(2) shall be subject to limitations imposed by the board of directors of the Federal intermediate credit bank and Farm Credit Administration regulations.

(c)(1) On request, the Farm Credit Administration Board may permit a production credit association, located in a district in which there are no more than three such associations, notwithstand-

any territorial limitation in the charter of such association, to provide credit and technical assistance to any borrower who is denied credit by a production credit association that—

(A) has an adjoining service territory; and

(B) is located in the same district.

if the Board determines that one of the production credit associations in the district is unduly restrictive in the application of credit standards.

(2) If the Credit Administration Board approves the extension of credit and technical assistance under paragraph (1), the association shall approve or deny the application for credit within 90 days after the receipt of the application from the borrower.

* * * * * * *

TITLE III—BANKS FOR COOPERATIVES

SEC. 3.0. ESTABLISHMENT, TITLES; BRANCHES.—The banks for cooperatives established pursuant to sections 2 and 30 of the Farm Credit Act of 1933, as amended, shall continue as federally chartered instrumentalities of the United States. Their charters or organization certificates may be modified from time to time by the Farm Credit Administration, not inconsistent with the provisions of this title, as may be necessary or expedient to implement this Act. Unless an existing bank for cooperatives is merged with one or more other such banks under section 4.10 of this Act, there shall be a bank for cooperatives in each farm credit district, and a Central Bank for Cooperatives. A bank for cooperatives may include in its title the name of the city in which it is located or other geographical designation. The Central Bank for Cooperatives may be located in such place as its board of directors may determine with the approval of the Farm Credit Administration. When authorized by the Farm Credit Administration each bank for cooperatives may establish such branches or other offices as may be appropriate for the effective operation of its business.

SEC. 3.1. CORPORATE EXISTENCE; GENERAL CORPORATE POWERS.—Each bank for cooperatives shall be a body corporate and, subject to regulation by the Farm Credit Administration, shall have power to—

* * * * * * *

(19) Operate as an originator and to become certified as a certified facility under title VIII.

SEC. 3.2. BOARD OF DIRECTORS.—(a) In the case of a district bank for cooperatives, the board of directors shall be the farm credit district board and in the case of the Central Bank for Cooperatives shall be a separate board of not more than thirteen members, one from each farm credit district and one at large. One district director of the Central Bank Board shall be elected by each district farm credit board and the member at large shall be appointed by the [Farm Credit Administration] *Other members of the Board, and shall not be a shareholder of, a borrower from, or an officer, employee, or agent of a System institution.*

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SEC. 3.8. ELIGIBILITY. (1) * * *

[(2) Notwithstanding any other provision of this title, cooperatives and other entities that have received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration, or a loan or loan commitment from the Rural Telephone Bank, or that have been certified by the Administrator of the Rural Electrification Administration to be eligible for such a loan, loan commitment, or loan guarantee, and subsidiaries of such cooperatives or other entities, shall also be eligible to borrow from a bank for cooperatives.]

(2)(A) Notwithstanding any other provision of this title, a cooperative or other entity, that under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) has—

(i) received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration;

(ii) received a loan or loan commitment from the Rural Telephone Bank; or

(iii) been certified by the Administrator of the Rural Electrification Administration to be eligible for such a loan, loan commitment, or loan guarantee,

and subsidiaries of such cooperatives or other entities, shall be eligible to borrow from a bank for cooperatives.

(B) Notwithstanding paragraph (l), a legal entity, more than 50 percent of the voting control of which is held by one or more associations or other entities that are eligible to borrow from a bank for cooperatives under paragraph (l) or subparagraph (A), shall be eligible to borrow from a bank for cooperatives, if such entity complies with paragraph (l)(c).

(C) An association or other entity that is eligible to borrow from a bank for cooperatives under this paragraph shall, for purposes of section 3.7(a), be considered an "eligible cooperative association" and a "stockholder eligible to borrow from the bank".

* * * * * * *

TITLE IV—PROVISIONS APPLICABLE TO TWO OR MORE CLASSES OR INSTITUTIONS OF THE SYSTEM

PART A—FUNDING

[SEC. 4.0. REVOLVING FUNDS; INVESTMENTS.—The revolving fund established by Public Law 87-343, 75 Stat. 758, as amended, and the revolving fund established by Public Law 87-494, 76 Stat. 109, as amended, and continued by Public Law 96-592, shall be merged and shall be available to the Farm Credit Administration for the purchase, on behalf of the United States, of capital stock of the Capital Corporation. The Farm Credit Administration may make such purchases of stock as the Farm Credit Administration determines, in its discretion, are necessary to achieve the purposes of this Act.]

SEC. 4.0. REVOLVING FUND.—

(a) REVOLVING FUND.—The revolving fund established by this section (as it existed before the amendment made by section 102 of the Farm Credit Act Amendments of 1987) shall be available to the Farm Credit Administration—

(1) during the period, and for the purposes provided for in section 6.8(b) and 6.13; and

(2) during the period beginning January 1, 1993, to advance funds to the Reserve Account established under section 4.9A if the Account does not have sufficient funds to carry out section 4.9A(e)(3).

(b) RESERVE ACCOUNT.—Any funds advanced from the revolving fund to the Reserve Account under subsection (a)(2) shall be repaid from the Reserve Account in accordance with the terms and conditions established by the Farm Credit Administration.

SEC. 4.1. REQUIREMENTS TO PURCHASE STOCK AND PAY ASSESSMENTS AND CONTRIBUTE CAPITAL TO CAPITAL CORPORATION.—The Federal land banks, the Federal intermediate credit banks, the banks for cooperatives, the Federal land bank associations, and the production credit associations shall purchase stock in, or obligations of, the Capital Corporation, pay assessments, make capital contributions, and take such other related actions as required by the Capital Corporation in the exercise of its powers under this Act. Any payment for retirement of stock so purchased, or repayment of obligations so purchased, by the Capital Corporation shall be distributed among all holders of such stock or obligations on the basis of the book value of the stock or obligations held by each such holder at the time of the distribution.

* * * * * * *

SEC. 4.3. CAPITAL ADEQUACY OF BANKS AND ASSOCIATIONS.—(a) The Farm Credit Administration shall cause System institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such System institutions and by using such other methods as the Farm Credit Administration deems appropriate. The Farm Credit Administration may establish such minimum level of capital for a System institution as the Farm Credit Administration, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the System institution.

(b)(1) Failure of a System institution to maintain capital at or above its minimum level as established under the subsection (a) may be deemed by the Farm Credit Administration, in its discretion, to constitute an unsafe and unsound practice within the meaning of this Act.

(2)(A) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the Farm Credit Administration may issue a directive to a System institution that fails to maintain capital at or above its required level as established under subsection (a). Such directive may require the System institution to submit and adhere to a plan acceptable to the Farm Credit Administration describing the means and timing by which the System institution shall achieve its required capital level, but may not require merger or consoldiation without a majority vote of the voting stockholders or the contributors to the guaranty fund of the institution.

(B) Any directive issued under this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 5.31 of this Act to the same extent as an effective and outstanding order issued under section 5.25 of this Act that has become final.

(3) The Farm Credit Administration may consider such System institution's progress in adhering to any plan required under paragraph (2) whenever such System institution, or an affiliate thereof, seeks the requisite approval of the Farm Credit Administration for any proposal that would divert earnings, diminish capital, or otherwise impede such System institution's progress in achieving its minimum capital level. The Farm Credit Administration may deny such approval where it determines that such proposal would adversely affect the ability of the System institution to comply with such plan.

[(c) Each bank shall have on hand at the time of issuance of any long-term notes, bonds debentures, or other similar obligations and at all times thereafter maintain, free from any lien or other pledge, notes and other obligations representing loans made under the authority of this Act, obligations of the United States or any agency thereof direct of fully guaranteed, other readily marketable securities approved by the Farm Credit Administration, or cash, in an aggregate value equal to the total amount of long-term notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.]

(c) Each bank shall have on hand at the time of issuance of any note, bond, debenture, or other similar obligation and at all times thereafter maintain, free from any lien or other pledge, notes and other obligations representing loans made under this Act or real or personal property acquired in connection with loans made under this Act, obligations of the United States or any agency thereof direct of fully guaranteed, other bank assets (including marketable securities) approved by the Farm Credit Administration, or cash, in an aggregate value equal to the total amount of notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

SEC. 4.3a. CAPITALIZATION OF SYSTEM INSTITUTIONS.—(a) DEFINITIONS.—As used in this section:

(1) CAPITAL.—The term "capital" means current year retained earnings, allocated and unallocated earnings, all surplus less allowance for losses, and stock.

(2) STOCK.—The term "stock" means voting and nonvoting stock, equivalent contributions to a guaranty fund, and participation certificates.

(b) ADOPTION OF BYLAWS.—Subject to approval by shareholders under subsection (c)(2), each bank and association shall adopt bylaws that provide for the capitalization of the institution in accordance with subsection (c)(1).

(c) REQUIREMENTS OF BYLAWS—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the bylaws adopted unser subsection (b).

(A) shall provide for such classes, par value, and amounts of the stock of the institution, the manner in which such stock shall be issued, transferred, and retired, and the payment of dividends and patronage refunds, as determined appropriate by the Board of Directors, except that no stock may be issued by an institution, after the adoption of bylaws under subsection (b), that may be retired by the holder thereof on repayment of the loan of the

holder, or otherwise retired at the option or request of the holder:

(B) may provide for the charging of loan origination fees as determined appropriate by the Board of Directors;

(C) shall enable the institution to meet the capital adequacy standards established under the regulations issued under section 4.3(a):

(D) shall provide for the issuance of voting stock, which may only be held by—

(i) borrowers who are farmers, ranchers, or producers or harvesters of aquatic products, and cooperative associations eligible to borrow from System institutions under this Act:

(ii) in the case of a Central Bank for Cooperatives, other banks for cooperatives; and

(iii) in the case of banks other than banks for cooperatives, System associations;

(E) shall require that—

(i) as condition of borrowing from or through the institution, any borrower who is entitled to hold voting stock or participation certificates shall, at the time a loan is made, acquire voting stock or participation certificates in an amount equal to $1,000 or 2 percent of the amount of the loan, whichever is less; and

(ii) within 2 years after the loan of a borrower is repaid in full, any voting stock held by the borrower be converted to nonvoting stock;

(F) may provide that persons who are not borrowers from the institution may hold nonvoting stock of the institution;

(G) shall require that any holder of stock, issued before the adoption of bylaws under this section, exchange a portion of such stock for new voting stock;

(H) do not need to provide for maximum or minimum standards of borrower stock ownership based on a percentage of the loan of the borrower;

(I) shall permit the retirement of stock at the discretion of the institution if the institution meets the capital adequacy standards established under regulations issued under section 4.3(a); and

(J) shall permit stock to be transferable.

(2) EFFECTIVE DATE.—The bylaws adopted by the Board of Directors of a System institution under this section shall take effect only upon approval of a majority of the stockholders of such institution present and voting, or voting by written proxy, at a duly authorized stockholders' meeting.

(d) REDUCTION OF CAPITAL.—

(1) GENERAL RULE.—Except as provided in paragraph (2) and in section 4.9B, the Board of Directors of a System institution shall not reduce the capital of the institution through the payment of patronage refunds or dividends, or the retirement of stock or allocated equities if, after or due to such action, the capital of the institution would thereafter fail to meet the minimum capital adequacy standards established under section 4.3(a).

(2) EXCEPTION.—Notwithsatnding paragraph (1), any System institution subject to Federal income tax may pay patronage refunds partially in cash, if—

(A) the cash portion of the refund is the minimum amount required to qualify the refund as a deductible patronage distribution for Federal income tax purposes; and

(B) the remaining portion of the refund paid qualifies as capital.

(e) COMPLIANCE.—The Farm Credit Administration may issue a directive that requires compliance with subsection (d) to the Board of Directors of any System institution that fails to comply therewith.

(f) EFFECT.—This section shall not be construed to affect the provisions of this Act that confer on System institutions a lien on borrower stock or other equities and the privilege to retire or cancel such stock or other equities for application against the indebtedness on a defaulted or restructured loan.

(g) CONTROLLING AUTHORITY.—To the extent that any provision of this section is inconsistent with any other provision of this Act, other than section 4.9B, the provision of this section shall control.

SEC. 4.4. LIABILITY OF BANKS; UNITED STATES NOT LIABLE.—[(a) Each bank of the System shall be fully liable on notes, bonds, debentures, or other obligations issued by it individually, and shall be liable for the interest payments on long-term notes, bonds, debentures, or other obligations issued by other banks operating under the same title of this Act. Each bank shall also be primarily liable for the portion of any issue of consolidated or System-wide obligations made on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration in order to make payments of interest or principal which any bank primarily liable therefor shall be unable to make. Such calls shall be made first upon the other banks operating under the same title of this Act as the defaulting bank, and second upon banks operating under other titles of this Act, taking into consideration the capital, surplus, bonds, debentures, or other obligations which each may have outstanding at the time of such assessment.] *(a)(1) Each bank shall be fully liable on notes, bonds, debentures, or other obligations issued by the bank individually, and shall be liable for the interest payments on long-term notes, bonds, debentures, or other obligations issued by other banks operating under the same title of this Act.*

(2)(A) Each bank shall also be primarily liable for the portion of any issue of consolidated or System-wide obligations made on its behalf and be jointly and severally liable for the payment of any additional sums as called on by the Farm Credit Administration in order to make payments of interest or principal that any bank primarily liable therefor is unable to make.

(B) Such calls shall be made on all nondefaulting banks in accordance with the proportionate share of the available collateral of each bank compared to the aggregate available collateral held by all such banks.

(C) For purposes of subparagraph (B) the term available collateral means the amount of eligible collateral (at the end of the calendar quarter immediately preceding such call) in excess of the collateral

required (as of such date) to satisfy the collateral requirement of section 4.3(c) with respect to the outstanding notes, bonds, debentures, or other similar obligations of the bank.

(D) Any bank that, pursuant to a call by the Farm Credit Administration, makes a payment of interest or principal to a holder of any issue of consolidated or System-wide obligations of a defaulting bank shall be subrogated to the rights of the holders or former holders of such consolidated or System-wide obligations.

(E) On making such call, the Farm Credit Administration Board shall appoint a receiver for the defaulting bank for the purpose of expeditiously liquidating the bank.

(b) Each bank participating in an issue shall by appropriate resolution undertake such responsibility as provided in subsection (a), and in the case of consolidated or System-wide obligations shall authorize the execution of such long-term notes, bonds, debentures, or other obligations on its behalf. When a consolidated or System-wide issue is approved, the notes, bonds debentures, or other obligations shall be executed and the banks shall be liable thereon as provided herein.

(c) For purposes of this part, the term "bank" shall include the Capital Corporation.

(d) The United States shall not be liable or assume any liability directly or indirectly thereon.

[SEC. 4.5. FINANCE COMMITTEE.—There shall be established a finance committee for the banks organized and operated under titles I, II, and III, respectively, of this Act, composed of the president of each bank or the president's designee. Each such committee may have such officers and such subcommittees for such terms and such representation as may be agreed upon between the banks. When appropriate to the performance of their function, the subcommittees or representatives thereof, of the various banks shall constitute such subcommittees in connection with System-wide issues of obligations. The finance committees and subcommittees acting for the banks of the System shall, subject to approval of the Farm Credit Administration, determine the amount, maturities, rates of interest, and participation by the several banks in each issue of joint, consolidated, or System-wide obligations.]

SEC. 4.5. FINANCE COMMITTEE.—(a) ESTABLISHMENT.—There shall be established a System-wide finance committee composed of a representative of each-bank.

(b) OFFICERS AND SUBCOMMITTEES.—The committee may have such officers and subcommittees for such terms and representation as may be agreed to by the banks.

(c) DUTIES.—The finance committee and subcommittees acting for the banks of the System shall, subject to approval of the Farm Credit Administration, determine the amount, maturities, rates of interest, and participation by the several banks in each issue of joint, consolidated, or System-wide obligations.

* * * * * * *

SEC. 4.8. PURCHASE AND SALE OF OBLIGATIONS.—(a) Each bank of the System may purchase its own obligations and the obligations of other banks of the System and may provide for the sale of obligations issued by it, consolidated obligations, or System-wide obliga-

tions through a fiscal agent or agents, by negotiation, offer, bid, syndicate sale, and to deliver such obligations by book entry, wire transfer, or such other means as may be appropriate.

(b) Through December 31, [1988] *1992*, each bank of the System, in addition to purchasing obligations as authorized by this Act, may, with the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, (1) reduce the cost of its borrowings by doing one or more of the following: (A) contracting with a third party, or an entity that is established as a limited purpose System institution under section 4.25 and that is not to be included in the combined financial statements of other System institutions, with respect to the payment of interest on the bank's obligations and the obligations of other banks incurred before January 1, 1985, in consideration of the payment of market interest rates on such obligations, plus a premium, or (B) for the period July 1, 1986, through December 31, [1988] *1992*, capitalizing interest costs on obligations incurred before January 1, 1985, in excess of the estimated interest costs on an equivalent amount of Farm Credit System obligations at prevailing market rates on such obligations of similar maturities as of the date of the enactment of this subsection, or (C) taking other similar action; and (2) amortize, over a period of not to exceed 20 years, the capitalization of the premium, capitalization of interest expense, or like costs of any action taken under clause (1).

SEC. 4.9. FISCAL AGENCY.—A fiscal agency shall be established by the banks for such of their functions relating to the issuance, marketing, and handling of their obligations, and interbank or intersystem flow of funds as may from time to time be required.

[SEC. 4.9A. CENTRAL RESERVE FOR FARM CREDIT SYSTEM.—(a) The Farm Credit Administration may, effective January 1, 1991, establish and maintain a central reserve for the Farm Credit System.

[(b) Such central reserve shall be held in the form of Treasury securities and demand deposits.

[(c) The Farm Credit Administration may use the reserve to make temporary deposits and temporary investments in financially troubled banks or associations of the Farm Credit System.

[(d)(1) The Farm Credit Administration may order payments into such central reserve of one-tenth of 1 percent of the proceeds of each individual, consolidated, or System-wide note, bond, debenture, or other obligation issued by the Farm Credit System, or any part thereof, under this Act.

[(2) Such payments under paragraph (1) may be ordered during any period when such central reserve contains the unobligated sum the Farm Credit Administration deems inadequate to achieve the purposes of such central reserve, but not more than a sum equal to 3 percent of the total of loans outstanding on December 31 of the last preceding calendar year from institutions in the Farm Credit System to persons other than other such institutions.

[(e) The Farm Credit Administration shall require a bank or association to repay in whole or in part a temporary deposit or retire in whole or in part a temporary investment, made in such bank or association under this section, at such time as in the opinion of the Farm Credit Administration such bank or association has resources

available therefor and the need for such temporary deposit or temporary investment is reduced or no longer exists.

[(f) The Farm Credit Administration shall issue rules and regulations implementing this section.]

SEC. 4.9A. FARM CREDIT SYSTEM CENTRAL RESERVE ACCOUNT.—(a) IN GENERAL.—Effective January 1, 1992, the Farm Credit Administration Board shall establish and maintain the Farm Credit System Central Reserve Account (referred to in this Act as the "Reserve Account").

(b) FORM.—The Reserve Account shall be held in the form of securities, with such maturities as are determined by the Reserve Account Board to be appropriate to enable the Board to carry out the obligations of the Board under this section.

(c) RESERVE ACCOUNT BOARD.—

(1) ESTABLISHMENT.—The Reserve Account shall be managed by a Reserve Account Board of Directors that shall consist of the members of the Farm Credit Administration Board.

(2) CHAIRMAN.—The Reserve Account Board shall be chaired by any Board member other than the Chairman of the Farm Credit Administration Board.

(d) PREMIUMS.—

(1) IN GENERAL.—The Reserve Account Board shall assess and collect such premiums for System banks as are necessary to carry out this section, except that the annual premium due from any System bank for any calendar year shall not exceed the sum of—

(A) the average principal outstanding during the prior calendar year on all loans made by such bank that are in accrual status, multiplied by 0.0015; and

(B) the average principal outstanding during the prior calendar year on all loans made by such bank that are in nonaccrual status, multipled by 0.0025.

(2) DETERMINATION OF PRINCIPAL OUTSTANDING.—For the purpose of paragraph (1), the principal outstanding on all loans, in accrual and nonaccrual status, made by a Federal intermediate credit bank shall be determined based on all loans in accrual and nonaccrual status made—

(A) by the production credit associations in the district in which such bank is located;

(B) by any bank, company, institution, corporation, union, or association described in section 2.3(a)(2), that is able to make such loans because such entity is receiving, or has received, funds provided through the Federal intermediate credit bank; and

(C) by such Federal intermediate credit bank (other than loans made to any party described in subparagraph (A) or (B)).

(e) USES.—The Reserve Account shall be used by the Reserve Account Board to provide assistance to System institutions as needed—

(1) to satisfy notes, bonds, debentures, or other individually issued obligations that issuing System institutions are unable to satify independently;

(2) to satisfy consolidated or System-wide obligations to the extent that a participating System institution is unable to make

payments of principal and interest, or both, for which such institution is primarily liable;

(3) to satisfy System institution defaults through the purchase of preferred stock or other payments as provided for in section 6.26(d)(3); and

(4) to ensure the retirement of borrower stock at par value and participation certificates or other similar equities at face value as provided for under section 4.9B(c)(2).

(f) LIABILITY.—If the Reserve Account Board is called on to make payment of principal or interest, or both, of any obligation described in paragraph (2) of subsection (e), on behalf of a System institution that is unable to make such payment without assistance, and if the amount due exceeds the funds available in the Reserve Account—

(1) The Reserve Account Board shall make a partial payment on the obligation to the extent of the funds available in the Reserve Account; and

(2) each System bank shall be jointly and severally liable under section 4.4 for the payment of any additional amounts due or called on by the Farm Credit Administration to the extent necessary to retire the full amount of such obligation.

(g) REGULATIONS.—

(1) IN GENERAL,—The Farm Credit Administration shall issue such regulations as are necessary to carry out this section, including regulations concerning—

(A) the basis on which System institutions are to be assessed premiums to be paid to the Reserve Account;

(B) the method by which premiums shall be collected from System institutions for the Reserve Account;

(C) the maximum amount of funds that may be held by the Reserve Account at one time;

(D) the circumstances under which payments shall be made by the Reserve Account, consistent with subsection (e); and

(E) the method by which payments shall be made pursuant to subsection (e).

(2) IMPLEMENTATION.—The Farm Credit Administration shall issue—

(A) proposed regulations to carry out this section not later than October 1, 1990; and

(B) final regulations to carry out this section not later than July 1, 1991.

(3) NOTIFICATION OF CONGRESS.—Notwithstanding any other provision of law, final regulations issued by the Farm Credit Administration pursuant to this section shall be presented to Congress not later than 30 days prior to publication of such final regulations.

SEC. 4.9B. PROTECTION OF BORROWER STOCK, PARTICIPATION CERTIFICATES, AND OTHER SIMILAR EQUITIES.—(a) GUARANTEE.—Notwithstanding any other provision of law, with respect to any loan made by a System institution to a borrower that is secured by stock, participation certificates, or other similar equities held by a person other than a System institution or entity described in section 2.3(a)(2), that is repaid in full—

(1) in the case of stock, the stock shall be retired and paid for at par value by the lending institution; and

(2) in the case of participation certificates or other similar equities, the certificates or equities shall be retired and paid for at face value by the lending institution.

(b) APPLICATION.—This section shall only apply to any borrower stock, participation certificate, or other similar equity referred to in subsection (a) that—

(1) was frozen, or retired at less than par value, by an association after January 1, 1983, in connection with the liquidation of an association;

(2) is outstanding on the date of enactment of the Farm Credit Act Amendments of 1987; or

(3) is required to be purchased, and is purchased, as a condition of obtaining a loan made after the date of enactment of the Farm Credit Act Amendments of 1987, but prior to the earlier of—

(A) in the case of each bank and association, the date of approval, by the stockholders or such bank or association, of the capitalization requirements of the institution in accordance with section 4.9B; or

(B) the date that is 9 months after the date of enactment of the Farm Credit Act Amendments of 1987.

(c) FINANCIAL ASSISTANCE TO RETIRE STOCK.—

(1) CERTIFICATION.—During the 5-year period beginning on the date of enactment of the Farm Credit Act Amendments of 1987, if a System institution is unable to retire any of the borrower stock, participation certificates, or other similar equities described in paragraph (2) or (3) of subsection (b) in accordance with subsection (a), such institution shall apply to the Assistance Board for certification of eligibility to issue preferred stock under section 6.4. The Assistance Board shall so certify issuance of stock by such institution in an amount sufficient to assure redemption of the stock, certificates, or equities.

(2) AMOUNTS OF ASSISTANCE.—After the 5-year period begining on the date of enactment of the Farm Credit Act Amendments of 1987, if a System institution is unable to retire any of the borrower stock, participation certificates, or other similar equities, described in paragraph (2) or (3) of subsection (b) for the amounts described in subsection (a), financial assistance sufficient to assure redemption of such stock, certificates, or equities at par or face value shall be provided to the System institution by the Farm Credit System Central Reserve Account.

(d) PROCEDURES.—The Assistance Board shall develop and implement procedures under which the Financial Assistance Corporation is directed to provide funds to stockholders or receivers of an association specified in subsection (b)(1) not later than 30 days after the first issuance of obligations by the Financial Assistance Corporation under section 6.26, to carry out the stock guarantee provided for in subsection (b)(1).

PART B—DISSOLUTION [AND MERGER]

[SEC. 4.10. MERGER OF SIMILAR BANKS.—Banks organized or operating under titles I, II, or III, respectively, may upon majority vote cast by their voting stockholders and contributors to their guaranty funds in accordance with the voting strength provisions of section 5.2(c) of this Act relating to elections of directors of the district boards, and with the approval of the Farm Credit Administration, merge with banks in other districts operating under the same title of this Act.

[SEC. 4.11 BOARD OF DIRECTORS FOR MERGED BANK.—In the event of merger of two or more banks to serve borrowers in more than one farm credit district, a separate board of directors shall be created for the resulting merged bank. The board thus created shall be composed of two directors elected by each of the district boards involved, at least one of which from each district shall have been elected by the eligible stockholders of or subscribers to the guaranty fund of the merging banks, and one director appointed by the Farm Credit Administration. Notwithstanding the foregoing, the bylaws of the merged bank may, with the approval of the Farm Credit Administration, provide for a different number of directors selected in a different manner. The board so constituted shall have such separated and distinct powers, functions, and duties as are normally exercised by a district board related to the operations and policies of the banks which were merged.]

SEC. 4.12. DISSOLUTION; VOLUNTARY LIQUIDATION; MERGERS; RECEIVERSHIPS; AND CONSERVATORS.—(a) No institution of the System shall go into voluntary liquidation without the consent of the Farm Credit Administration and with such consent may liquidate only in accordance with regulations prescribed by the Farm Credit Administration. In the case of a voluntary liquidation of an association, such regulations, among other things, shall direct the supervising bank to institute such measures as it deems appropriate to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution. [Associations may voluntarily merge with other like associations upon the vote of a majority of each of their stockholders present and voting or voting by written proxy at duly authorized meetings, and with the approval of the supervising bank and the Farm Credit Administration.] The Farm Credit Administration [may require such merger] *Board may require an association to merge with another association* whenever it determines, with the concurrence of the district board, that an association has failed to meet its outstanding obligations or failed to conduct its operations in accordance with this Act.

(b) The Farm Credit Administration *Board* may appoint a conservator or receiver for any System institution on the determination by the Farm Credit Administration *Board* that one or more of the following exists, or is occurring, with respect to the institution: (1) insolvency, in that the assets of the institution are less than its obligations to its creditors and others, including its members; (2) substantial dissipation of assets or earnings due to any violation of law, rules, or regulations, or to any unsafe or unsound practice; (3) an unsafe or unsound condition to transact business; (4) willful vio-

lation of a cease and desist order that has become final; (5) concealment of books, papers, records, or assets of the institution or refusal to submit books, papers, records, or other material relating to the affairs of the institution for inspection to any examiner or to any lawful agent of the Farm Credit Administration. The Farm Credit Administration shall have exclusive power and jurisdiction to appoint a conservator or receiver. If the Farm Credit Administration determines that a ground for the appointment of a conservator or receiver as herein provided exists, the Farm Credit Administration may appoint ex parte and without notice a conservator or receiver for the institution. In the event of such appointment, the institution, within thirty days thereafter, may bring an action in the United States district court for the judicial district in which the home office of such institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration to remove such conservator or receiver, and the court, shall on the merits, dismiss such action or direct the Farm Credit Administration to remove such conservator or receiver. On the commencement of such an action, the court having jurisdiction of any other action or enforcement proceeding authorized under this Act to which the institution is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

(c) In the case of an involuntary liquidation of an association, regulations of the Farm Credit Administration, among other things, shall direct the supervising bank to institute such measures as it deems appropriate to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution.

PART C—RIGHTS OF APPLICANTS

[SEC. 4.13. DISCLOSURE.—(a) In accordance with regulations of the Farm Credit Administration, System institutions shall provide to their borrowers, for all loans that are not subject to the Truth in Lending Act (15 U.S.C. 1601 et seq.), meaningful and timely disclosure of the following:

[(1) the current rate of interest on the loan;

[(2) in the case of an adjustable or variable rate loan, the amount and frequency by which the interest rate can be increased during the term of the loan or, if there are no such limitations, a statement to that effect, and the factors (including, but not limited to, the cost of funds, operating expenses, and provision for loan losses) that will be taken into account by the lending institution in determining adjustments to the interest rate;

[(3) the effect, as shown by a representative example or examples, of the required purchase of stock or participation certificates in the institution on the effective rate of interest; and

[(4) any change in the interest rate applicable to the borrower's loan;

[(b) In accordance with regulations of the Farm Credit Administration, System institutions shall develop a policy governing forbearance. Each System institution shall provide borrowers with a

copy of the institution's policy regarding forbearance at such time or times as the Farm Credit Administration shall prescribe in such regulations.]

SEC. 4.13. DISCLOSURE.—(a) IN GENERAL.—In accordance with regulations of the Farm Credit Administration, banks and associations (except banks for cooperatives) shall provide to borrowers, for all loans that are not subject to the Truth in Lending Act (15 U.S.C. 1601 et seq.), meaningful and timely disclosure not later than the time of the loan closing, of—

(1) the current rate of interest on the loan;

(2) in the case of an adjustable or variable rate loan, the amount and frequency by which the interest rate can be increased during the term of the loan or, if there are no such limitations, a statement to that effect, and the factors (including the cost of funds, operating expenses, and provision for loan losses) that will be taken into account by the lending institution in determining adjustments to the interest rate;

(3) the effect, as shown by a representative example or examples, of any loan origination charges or purchases of stock or participation certificates in the institution on the effective rate of interest;

(4) any change in the interest rate applicable to the borrower's loan;

(5) except with respect to stock guaranteed under section 4.9B, a statement indicating that stock that is purchased is at risk; and

(6) a statement indicating the various types of loan options available to borrowers, with an explanation of the terms and rights that apply to each type of loan.

(b) DIFFERENTIAL INTEREST RATES.—A bank or association (except a bank for cooperatives) offering more than one rate of interest to borrowers shall, at the request of a borrower of a loan—

(1) provide a review of the loan to determine if the proper interest rate has been established;

(2) explain to the borrower in writing the basis for the interest rate charged; and

(3) explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

SEC. 4.13A. ACCESS TO DOCUMENTS AND INFORMATION.—In accordance with regulations of the Farm Credit Administration, [System institutions] *banks and associations (except banks for cooperatives)* shall provide their borrowers, at the time of execution of loans, copies of all documents signed by the borrower and at any time thereafter, on a borrower's request, copies of all documents signed or delivered by the borrower and at any time, on request, a copy of the institution's articles of incorporation or charter and bylaws.

[SEC. 4.13B. NOTICE OF ACTION ON APPLICATION.—Every applicant for a loan from an institution of the System shall be entitled to prompt written notice of action on this application, and, if the loan applied for is reduced or denied, the reason for such action, and of the applicant's right to review under section 4.14.]

SEC. 4.13B. NOTICE OF ACTION ON APPLICATION.—(a) IN GENERAL.—Each applicant for a loan from a bank or association (except

banks for cooperatives), and each borrower from a bank or association (except banks for cooperatives) who is a family farmer, as defined in section 4.14A(f)(3), and who submits an application for restructuring a distressed loan, shall be entitled to prompt written notice of—

(1) the action on the application;

(2) if the loan applied for is reduced or denied, or the application for restructuring is denied, the reason for such action; and

(3) the applicant's right to seek review of the decision by the lender under section 4.14.

(b) NOTICE OF THE RIGHT TO APPLY FOR RESTRUCTURING.—Not later than 14 days before accelerating the loan, or otherwise commencing a foreclosure proceeding on the distressed loan of a borrower who is a family farmer, the System institution shall notify the borrower in writing of the right of the borrower to submit an application for restructuring.

[SEC. 4.14. RECONSIDERATION OF ACTION OF LOAN APPLICATION.—The Board of directors of each Farm Credit System institution shall establish one or more credit review committee(s), which shall include farmer board representation. Any loan applicant who has received written notice, under section 4.13, of a decision to deny or reduce the loan applied for, if the applicant so requests in writing within thirty days after receiving such notice, may obtain a review of such decision in person before the credit review committee. When a loan applicant requests review of an adverse credit decision, a majority of persons serving on such reviews committee must be persons who were not involved in making the adverse decision. Promptly, after any such review, the applicant shall be notified in writing of the credit review committee's decision and the reasons therefor.]

SEC. 4.14. RECONSIDERATION OF CERTAIN ACTIONS.—(a) CREDIT REVIEW COMMITTEES.—

(1) IN GENERAL.—The Board of Directors of each bank and association (except a bank for cooperatives, shall establish one or more credit review committees. Such committees shall include at least one representative of producers in the area served by the bank or association.

(2) ASSOCIATION-PRODUCER REPRESENTATION.—As applied to associations, the requirement in paragraph (1) that committees include at least one representative of producers shall be satisfied if—

(A) a member of the credit review committee is a stockholder-member of an advisory or similar Board of an association; and

(B) the member is duly elected to the Board by stockholders of the association.

(3) BANK-PRODUCER REPRESENTATION.—As applied to banks, the requirement in paragraph (1) that committees include at least one representative of producers, shall be satisfied if, at the option of the bank, a member of the committee is also a member of the Board of Directors of the appropriate Federal land bank or Federal intermediate credit bank.

(4) MEMBERSHIP.—In no case shall a loan officer, involved in the initial decision on a loan, serve on the credit review committee when the committee reviews such loan.

(b) REVIEW OF DECISIONS.—

(1) DENIALS OR REDUCTIONS.—Any applicant for a loan from a bank or association (except a bank for cooperatives) that has received a written notice issued under section 4.13B of a decision to deny or reduce the loan applied for may submit a written request, not later than 30 days after receiving a notice denying or reducing the amount of the loan application, to obtain a review of the decision by a credit review committee.

(2) DENIALS OF RESTRUCTURING.—Any borrower from a bank or association (except a bank for cooperatives) who is a family farmer, as defined in section 4.14A(f)(3), and has received a written notice issued under section 4.13B of a decision to deny an application for restructuring, may submit a written request, not later than 7 days after receiving notice of such denial for restructuring, to obtain a review of such decision before a credit review committee.

(c) PERSONAL APPEARANCE.—An applicant for a loan or for restructuring, who is entitled to and has requested a review under this section, may appear in person before the credit review committee, and may be accompanied by counsel or by any other representative of such person's choice, to seek a reversal of the decision on the application of the applicant that is being reviewed by the committee.

(d) INDEPENDENT APPRAISAL.—

(1) IN GENERAL.—An appeal filed with a credit review committee under this section may include, as a part of the request for a review of the decision filed under subsection (b)(1), a request for an independent appraisal, by an accredited appraiser, of any interests in property securing the loan other than the stock or participation certificates of the institution held by the borrower.

(2) ARRANGEMENT AND COST.—Within 30 days of a request for an appraisal under paragraph (1), the credit review committee shall arrange for such an independent appraisal, the cost of which shall be borne by the borrower, and shall consider the results of such appraisal in any final determination with respect to the loan.

(3) COPY TO BORROWER.—A copy of any appraisal made under this subsection shall be provided to the borrower.

(e) NOTIFICATION OF APPLICANT.—Promptly after a review by the credit review committee, the committee shall notify the applicant in writing of the decision of the committee and the reasons for the decision.

SEC. 4.14A. RESTRUCTURING DISTRESSED LOANS.—(a) RESTRUCTURING POLICY.—

(1) ESTABLISHMENT.—Each farm credit district Board of Directors shall develop a policy within 60 days after the date of enactment of the Farm Credit Act Amendments of 1987, that is consistent with this section, to govern the restructuring of distressed loans of family farmers. Such policy shall constitute the restructuring policy of each bank and association (except a bank for cooperatives) within the district.

(2) CONTENTS OF POLICY.—The policy established under paragraph (1) shall include an explanation of—

(A) the procedure for submitting an application for restructuring; and

(B) the right of borrowers with distressed loans who are family farmers to seek review by a credit review committee in accordance with section 4.14 of a denial of an application for restructuring.

(3) AVAILABILITY OF RESTRUCTURING POLICY.—

(A) IN GENERAL.—Each bank and association (except a bank for cooperatives) shall post in each loan office and provide to borrowers who are family farmers, not later than the time of the loan closing and on request, a copy of the policy of the institution concerning restructuring, as provided in subsection (d).

(B) ON SUBMISSION OF APPLICATION.—Unless the borrower has previously been furnished a copy of the policy of the institution on restructuring, a borrower who is a family farmer and who submits an application for restructuring shall be provided with a copy of the policy of the institution on restructuring at the time of the application.

(4) INSTITUTION PROPOSED PLANS.—This section shall not prevent a bank or association from proposing a restructuring plan for an individual borrower in the absence of an application for restructuring from a borrower.

(b) RESTRUCTURING STANDARDS.—

(1) IN GENERAL.—When a bank or association (except banks for cooperatives) receives an application for restructuring from a borrower who is a family farmer, the bank or association shall determine whether or not the loan shall be restructured taking into consideration—

(A) whether the cost to the System institution of restructuring the loan is equal to or less than the cost of foreclosure;

(B) whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

(C) whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration; and

(D) whether the borrower is capable of working out existing financial difficulties, reestablishing a viable operation, and repaying the loan on a rescheduled basis.

(2) COMPELLED RESTRUCTURING.—If the bank or association determines that the potential cost to the institution of restructuring the loan is less than or equal to the potential cost of foreclosure, the bank or association shall restructure the loan in accordance with the proposed restructuring plan.

(c) COMPUTATION OF COST OF RESTRUCTURING.—In determining whether the potential cost to the institution of restructuring a distressed loan is less than or equal to the potential cost of foreclosure, a bank or association shall consider all relevant factors, including—

(1) whether the borrower has been cooperative and has acted in good faith in dealing with the institution;

(2) whether the borrower has presented a restructuring plan and cashflow analysis, using reasonable and realistic projections and assumptions, showing a high probability that—

(A) the operation of the borrower will—

(i) return to financial viability as a result of the proposed restructuring; or

(ii) reduce the risk position of the institution; and

(B) orderly debt retirement will occur as a result of the proposed restructuring;

(3) whether the borrower has been applying and will continue to apply income in excess of the reasonable and necessary living and operating expenses of the borrower to the retirement of debt obligations;

(4) whether the borrower has been maintaining and will continue to maintain the buildings, improvements, and other farm-related assets in a reasonable state of repair, and has been caring for and will continue to care for all other collateral, including livestock;

(5) whether the borrower has pledged, or is willing to pledge as additional collateral, all unencumbered assets of greater than nominal value and all other assets with remaining equity that have greater than nominal value;

(6) whether the borrower has demonstrated good farm management skills;

(7) whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the institution;

(8) whether, and to what extent, other creditors of the borrower are willing to make reasonable concessions; and

(9) the effect, if any, the proposed restructuring would have on the liability of other comakers and any endorsers, guarantors, sureties, or other accommodation parties.

(d) PERMITTED FORECLOSURES.—Nothing in this section shall prevent a bank or association from commencing a foreclosure proceeding, or taking such other lawful action as considered appropriate by the institution, if the institution has reasonable grounds to believe that a borrower is likely to dissipate assets or divert collateral or that collateral is in imminent danger of deterioration.

(e) DEFINITIONS.—As used in sections 4.13B, 4.14, and 6.7 and in this section:

(1) APPLICATION FOR RESTRUCTURING.—The term "application for restructuring" means a written request—

(A) from a borrower for the restructuring of a nonaccrual distressed loan in accordance with a restructuring plan proposed by the borrower as a part of the application;

(B) submitted on the appropriate forms prescribed by the bank or association; and

(C) accompanied by sufficient financial information and repayment projections, where appropriate, as required by the institution to support a sound credit decision.

(2) COST OF FORECLOSURE.—The term "cost of foreclosure" includes—

(A) the difference between the outstanding amount of principal due on a loan made by an institution and the value of the collateral used to secure the loan;

(B) the estimated cost of maintaining a loan as a nonperforming asset;

(C) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure;

(D) the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(E) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(3) DISTRESSED LOAN.—The term "distressed loan" means a loan that the borrower does not have the financial capacity to pay according to its terms, but that is not yet subject to a foreclosure or bankruptcy proceeding, and that exhibits one or more of the following characteristics:

(A) The borrower is demonstrating adverse financial and repayment trends.

(B) The loan is delinquent or past due under the terms of the loan contract.

(C) One or both of the factors listed in subparagraphs (A) and (B), together with inadequate collateralization, present a high probability of loss to the institution.

(4) FAMILY FARMER.—The term "family farmer" means—

(A) an individual, or individual and spouse, engaged in a farming operation whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for the taxable year preceding the taxable year in which a de-

termination of eligibility is necessary for benefits provided under this Act to family farmers; or

(B) a corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and—

(i) more than 80 percent of the value of its assets consist of assets related to the farming operation;

(ii) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling that is owned by such corporation or partnership and that a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), arise out of the farming operation owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded.

(5) FORECLOSURE PROCEEDING.—The term "foreclosure proceeding" means—

(A) a foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a nonaccrual or distressed loan; or

(B) the seizing of and realizing on nonreal property collateral, other than collateral subject to a statutory lien arising under title I or II, to effect collection of a nonaccrual or distressed loan.

(6) RESTRUCTURE AND RESTRUCTURING.—The terms "restructure" and "restructuring" include—

(A) forbearance actions on a loan that result in rescheduling, renewal, settlement of debt or other similar actions that result in modification of the loan terms;

(B) deferral or forgiveness of payment of all or part of the principal or interest due on the loan;

(C) extension of the term of the loan through reamortization; and

(D) refraining from exercising a right with respect to a loan that is granted by the loan agreement or by law,

but do not include normal loan servicing actions, such as reschedulings, renewals, extensions, partial releases of collateral or changes in interest rate pricing, on loans that are not nonaccrual or distressed loans.

SEC. 4.15. NOMINATION OF ASSOCIATION DIRECTORS; REPRESENTATIVE SELECTION OF NOMINEES.—*(a)(1) Each production credit association and each Federal land bank association shall elect a board of directors that shall consist of members selected from citizens of the United States, one of whom shall not be a borrower from, a shareholder in, or an officer, employee, or agent of any institution of the Farm Credit System (referred to in this Act as an "outside director").*

(2) The bylaws of each association shall prescribe the procedures pursuant to which the directors shall be nominated and elected, including procedures requiring the election of the outside director by

the other members of the board of directors, and the number, term of office, and qualifications required of directors.

(b) Each production credit association and each Federal land bank association shall elect a nominating committee by vote of the stockholders at the annual meeting to serve for the following year. Each nominating committee shall review lists of [farmers from the association territory] *nominees* determine their willingness to serve, and submit for election a slate of eligible candidates which shall include at least two nominees for each elective office to be filled. In doing so, the committee shall endeavor to assure representation to all sections of the association territory and as nearly as possible to all types of agriculture practiced within the area. Employees of the association shall not be eligible to be nominated, elected, or serve as a member of the board. Nominations shall be accepted from the floor. Members of the board are not eligible to serve on the nominating committee. Regulations of the Farm Credit Administration governing the election of district directors shall similarly assure a choice of two nominees for each elective office to be filled and that the district board represent as nearly as possible all types of agriculture in the district.

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[SEC. 4.20. TERMINATION OF PROVISIONS.—The provisions of (1) section 2.3 authorizing the Federal intermediate credit banks to lend to or discount paper for other financial institutions, and (2) section 3.7(b) authorizing the financing of certain domestic or foreign entities in connection with the import or export activities of cooperatives which are borrowers from the banks for cooperatives, shall expire on September 30, 1990, unless extended by Act of Congress prior to that date. Any contract or agreement entered into under the authority of either provision prior to its expiration shall remain in full force and effect notwithstanding such expiration.]

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PART F—MISCELLANEOUS

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[SEC. 4.36. LIMITATIONS ON SALE OF TRACTS OF REAL ESTATE.—No institution of the Farm Credit System shall sell any real property that previously served as security for a loan in a tract larger than a normal family size farm in the vicinity of the property for less than the amount it can receive from the Capital Corporation.]

SEC. 4.37. RIGHT OF FIRST REFUSAL.—(a) Agricultural real estate that is acquired by an institution of the System as a result of loan foreclosure or a voluntary conveyance by a borrower who, as determined by the institution, does not have the financial resources to avoid foreclosure (hereinafter in this section referred to as "acquired real estate") shall be subject to the right of first refusal of the previous owner to repurchase or lease the property, as provided in this section.

(b)(1) When an institution of the System first elects to sell acquired real estate, the institution shall, within 15 days after such election, notify the previous owner by certified mail of the owner's right—

(A) to purchase the property at the appraised fair market value of the property, as established by an accredited appraiser; or

(B) to offer to purchase the property at a price less than the appraised value.

(2) To be eligible to purchase the property under paragraph (1), the previous owner must, within 15 days after receiving the notice required by such paragraph, submit an offer to purchase the property.

(3) An institution of the System receiving an offer from the previous owner to purchase the property at the appraised value shall, within 15 days after the receipt of such offer, accept such offer and sell the property to the previous owner.

(4) An institution of the System receiving an offer from the previous owner to purchase the property at less than the appraised value may accept such offer and sell the property to the previous owner. Notice shall be provided to the previous owner of the acceptance or rejection of such offer within 15 days after the receipt of such offer.

(5)(A) An institution of the System that rejects an offer from the previous owner to purchase the property at less than the appraised value may not sell the property to any other peson—

(i) at a price equal to, or less than, that offered by the previous owner; or

(ii) on different terms and conditions than those that were extended to the previous owner,

without first affording the previous owner an opportunity to purchase the property at such price or under such terms and conditions.

(B) Notice of the opportunity in subparagraph (A) shall be provided to the previous owner by certified mail, and the previous owner shall have 15 days in which to submit an offer to purchase the property at such price or under such terms and conditions.

(c)(1) Whenever an institution of the System elects to lease acquired real estate, the institution shall, within 15 days after such election, notify the previous owner by certified mail of the owner's right—

(A) to lease the property at a rate equivalent to the fair market value of the property for rental purposes, as established by an accredited appraiser; or

(B) to offer to lease the property at a rate less than the appraised value for rental purposes.

(2) To be eligible to lease the property under paragraph (1), the previous owner must, within 15 days after receiving the notice required by such paragraph, submit an offer to lease the property.

(3) An institution of the System receiving an offer from the previous owner to lease the property at a rate equivalent to the fair market value of the property for rental purposes shall, within 15 days after the receipt of such offer, accept such offer and lease the property to the previous owner unless the institution determines that the previous owner—

(A) does not have the resources available to conduct a successful farming or ranching operation; or

(B) cannot meet all of the payments, terms, and conditions of such lease.

(4) An institution of the System receiving an offer from the previous owner to lease the property at a rate less than the appraised

value of the property for rental purposes may accept such offer and lease the property to the previous owner.

(5) An institution of the System receiving an offer from the previous owner to lease the property at a rate less than the appraised value of the property for rental purposes shall notify the previous owner of its acceptance or rejection of the offer within 15 days after the receipt of such offer.

(6)(A) An institution of the System rejecting an offer from the previous owner to lease the property at a rate less than the appraised value of the property for rental purposes may not lease the property to any other person—

(i) at a rate equal to or less than that offered by the previous owner; or

(ii) on different terms and conditions than those that were extended to the previous owner,

without first affording the previous owner an opportunity to lease the property at such rate or under such terms and conditions.

(B) Notice of the opportunity in subparagraph (A) shall be given to the previous owner by certified mail, and the previous owner shall have 15 days after the receipt of such notice in which to agree to lease the property at such rate or under such terms and conditions.

(d)(1) If an institution of the System elects to sell or lease acquired property through a public auction, competitive bidding process, or other similar public offering, the institution shall notify the previous owner, by certified mail, of the availability of the property, and such notice shall contain the minimum amount, if any, required to qualify a bid as acceptable to the institution and any terms and conditions to which such sale or lease will be subject,

(2) If two or more qualified bids in the same amount are received by the institution under paragraph (1), such bids are the highest received, and one of the qualified bids is offered by the previous owner, the institution shall accept the offer by the previous owner.

(3) No institution of the System may discriminate against a previous owner in any public auction, competitive bidding process, or other similar public offering of such person's former property that has been acquired by the institution.

(e) For the purposes of this section, financing by a System institution shall not be considered to be a term or condition of a sale of acquired real estate.

(f) Notwithstanding any other provision of this section, a System institution is not required to provide financing to the previous owner in connection with the sale of acquired real estate.

(g) Notwithstanding any other provision of this section, each certified mail notice requirement in this section shall be fully satisfied by mailing one certified mail notice to the last known address of the former borrower.

TITLE V—DISTRICT AND FARM CREDIT ADMINISTRATION ORGANIZATION

PART A—DISTRICT ORGANIZATION

SEC. 5.0. CREATION OF DISTRICTS.—There shall be not more than twelve farm credit districts in the United States, which may be designated by number, one of which districts shall include the Commonwealth of Puerto Rico and one of which districts may, if authorized by the Farm Credit Administration, include the Virgin Islands, of the United States: *Provided,* That the extension of credit and other services authorized by this Act in the Virgin Islands of the United States shall be undertaken only if determined to be feasible under regulations of the Farm Credit Administration. The boundaries of the twelve farm credit districts existing on the date of enactment of this Act may be readjusted from time to time by the Farm Credit Administration, with the concurrence of the district boards involved. Two or more districts may be merged as provided in section 5.17(2).

SEC. 5.1. DISTRICT BOARDS OF DIRECTORS; MEMBERSHIP; ELIGIBILITY; TERMS.—(a) There shall be in each farm credit district a farm credit board of directors composed of seven members. Each farm credit district board may include in its title the name of the city in which the banks of the System for the district are located or other geographical designation.

(b) To be eligible for membership on a farm credit district board, *or membership on a farm credit Board consisting of banks merged from different districts,* a person must be a citizen of the United States for a least ten years, and a resident of the district *(if banks of different districts are merged, a resident of any district of a merged bank)* for at least two years.

A person shall not be eligible who—

(1) is or has, within one year next preceding the date of election or appointment, been a salaried officer or employee of the Farm Credit Administration or of any institution of the System;

(2) has been convicted of a felony or adjudged liable in damages for fraud; or

(3) if there is at the time of his election another resident of the same State who was elected to the district board by the same electorate, except where a district embraces only one State.

No director of a district board shall be eligible to continue to serve in that capacity and his office shall become vacant if after his election or appointment as a member of a district board, he continues or becomes a salaried officer or employee of the Farm Credit Administration, of any institution of the System, or a member of the Farm Credit Administration Board, or if he becomes legally incompetent or is finally convicted of a felony or held liable in damages for fraud. In any event, no director shall, within one year after the date when he ceases to be a member of the board, be elected or designated to serve as a salaried employee of any bank or joint employee of the district for which he served as director.

(c) The terms of district directors shall be for three years, except that the terms of appointed directors may be for a shorter or longer term to permit the staggering of such appointments over a three-year period but in no event shall such appointed director be eligible to serve for more than two full terms.

SEC. 5.2. SAME; NOMINATION; ELECTION.—(a)(1) Two of the district directors shall be elected by the Federal land bank associations, two by the production credit associations, and two by the borrowers from or subscribers to the guaranty fund of the bank for cooperatives.

[(2)(A) The seventh member shall be elected by the borrowers at large in a district.]

(2) The seventh member shall be elected by the six members elected under paragraph (1). Such seventh member shall be experienced in financial services and credit, and within the 2-year period prior to such election, shall not have been a borrower from, shareholder in, or director, officer, employee, or agent of, any institution of the Farm Credit System. If the six members fail to elect a member under this paragraph, the Farm Credit Administration Board shall appoint a qualified person to serve on the Board of Directors until a member is so elected.

(B) For purposes of this section, the term "borrowers at large in a district" means—

(i) a voting shareholder of a Federal land bank association and a direct borrower, and a borrower through an agnecy, from a Federal land bank;

(ii) a voting shareholder of a production credit association; and

(iii) a voting shareholder or subscriber to the guaranty fund of a bank for cooperatives.

(b) At least two months before an election of an elected director the Farm Credit Administration shall cause notice in writing to be sent to those entitled to nominate candidates for such elected director. In the case of an election of a director by Federal land bank associations and borrowers through agencies, such notice shall be sent to all Federal land bank associations and borrowers through agencies in the district; in the case of an election by production credit associations, such notice shall be sent to all production credit associations in the district; *and* in the case of an election by cooperative which are voting stockholders or subscribers to the guaranty fund of the bank for cooperative of the district, such notice shall be sent to all cooperatives which are eligible, voting stockholders or subscribers to the guaranty fund at the time of sending the notice [and in the case of an election by the borrowers at large, such notice shall be sent to all borrowers at large in the district.] The notice in the case of associations shall state the number of votes the board of each association is entitled to cast for nomination and election based on the voting stockholders of the association as determined by the Farm Credit Administration as near as practicable to the date of the notice. After receipt of such notice those entitled to nominate a director shall forward nominations to the Farm Credit Administration. The Farm Credit Administration shall, from the nominations received within sixty days after it sends such notice, prepare a list of candidates for such elected director, con-

sisting of the two nominees receiving the highest number of votes, except that for elections to fill vacancies the Farm Credit Administration may specify a shorter period than sixty days but not less than thirty days.

(c) At least one month before the election of an elected director, the Farm Credit Administration shall mail to each person or organization entitled to elect the elected director a list of the two candidates receiving the highest number of votes from those nominated in accordance with subsection (b). In the case of an election of a director by the Federal land bank association [the directors of each land bank association] *or by a merged association consisting of production credit associations and Federal land bank associations, the directors of each association involved* shall cast the vote of such association for one of the candidates on the list. Each association shall be entitled to cast the number of votes specified in the notice prior to the nomination poll as determined by the Farm Credit Administration to be the number of voting stockholders of each association, and each direct borrower and borrower through agent shall be entitled to cast one vote. Each production credit association shall be entitled to cast the number of votes specified in the notice of nomination poll as determined by the Farm Credit Administration to be equal to the number of voting stockholders of such association. Each cooperative which is the holder of voting stock in or a subscriber to the guaranty fund of the bank for cooperatives shall be entitled to cast one vote except as provided in subsection 3.3(d). [Each borrower at large shall be entitled to cast one vote.] The votes shall be forwarded to the Farm Credit Administration and no vote shall be counted unless received by it within sixty days after the sending of such list of candidates, except that for elections to fill vacancies the Farm Credit Administration may specify a shorter period than sixty days but not less than thirty days. In the case of a tie another runoff election between those tying shall be held.

(d) Any vacancies in the board of directors shall be filled for the unexpired term in the manner provided in section 5.1 and this section for the selection of such directors.

(e) In any case in which an association has merged into the supervising bank under chapter 2 of subtitle B of title VI, the voting strength provisions and voting procedures describes in this section shall be applied under regulations issued by the Farm Credit Administration that are designed to give appropriate weight to the votes of voting stockholder of banks other than associations.

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PART B—FARM CREDIT ADMINISTRATION ORGANIZATION

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SEC. 5.8. * * *

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(c) Each member of the Board, within fifteen days after notice of appointment, shall subscribe to the oath of office. The Board may transact business if a vacany exists, provided a quorum is present. A quorum shall consist of two members of the Board. The Board

shall hold at least one meeting each month and such additional meetings at such times and places as it may fix and determine. Such meetings shall be held on the call of the Chairman or any two Board members. [The Board shall adopt such rules as it deems appropriate for the transaction of its business and shall keep permanent and accurate records and minutes of its acts and proceedings.] *The Board shall adopt such rules as it deems appropriate for the transaction of business by the Board, and shall keep permanent and accurate records and minutes of the actions and proceedings of the Board.*

(d) The members of the Baord shall devote their full time and attention to the business of the Board. The Chairman of the Board shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5 of the United States Code. Each of the other members of the Board shall receive compensation at the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5 of the United States Code. Each member of the Board shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of the member's official duties without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States. This subsection shall be subject to the provisions of section 5.11 of this Act.

SEC. 5.9. POWERS OF THE BOARD; CIVIL PROCEEDINGS.—The Board shall manage and administer, and establish policies for, the Farm Credit Administration. It—

(1) shall approve the rules and regulations for the implementation of this Act not inconsistent with its provisions;

(2) shall provide for the examination of the condition of, and general regulation of the performance of the powers, functions, and duties vested in, each institution of the Farm Credit System;

(3) shall provide for the performance of all the powers and duties vested in the Farm Credit Administration; and

(4) may require such reports as it deems necessary from the institutions of the Farm Credit System.

SEC. 5.10. CHAIRMAN; REPONSIBILITIES; GOVERNING STANDARDS.—[(a) The Chairman of the Board shall be the executive officer of the Board and the chief executive officer of the Farm Credit Administration. The Chairman shall be responsible for directing the implementation of the policies and regulations adopted by the Board and the execution of all of the administrative functions and duties of the Farm Credit Administration. The Chairman shall be the spokesman for the Board and the Farm Credit Administration and shall represent the Board and the Farm Credit Administration in their official relations within the Government. Under policies adopted by the Board, the Chairman shall consult on a regular basis with the Secretary of the Treasury in connection with the exercise by the System of the powers conferred under section 4.2 of this Act, with the Board of Governors of the Federal Reserve System in connection with the effect of System lending activities on national monetary policy, and with the Secretary of Agriculture in connection with the effect of System policies on farmers and the

agricultural economy.] *(a)(1) The Chairman of the Board shall be the chief executive officer of the Farm Credit Administration.*

(2) In carrying out the responsibilities of the chief executive officer, the Chairman shall be responsible for directing the implementation of policies and regulations adopted by the Board and, after consultation with the Board, the execution of the administrative functions and duties of the Farm Credit Administration.

(3) In carrying out policies as directed by the Board, the Chairman shall act as spokesperson for the Board and represent the Board and the Farm Credit Administration in their official relations within the Federal government.

(4) Under policies adopted by the Board, the Chairman shall consult on a regular basis with—

(A) the Secretary of the Treasury concerning the exercise, by the System, of the powers conferred under section 4.2;

(B) the Board of Governors of the Federal Reserve System concerning the effect of System lending activities on national monetary policy; and

(C) the Secretary of Agriculture concerning the effect of System policies on farmers, ranchers, and the agricultural economy.

(b) In carrying out responsibilities under this Act, the Chariman of the Board shall be governed by general policies adopted by the Board and by such regulatory decisions, findings, and determinations as the Board may by law be authorized to make and, as to third persons, all acts of the Chairman of the Board shall be conclusively presumed to be in compliance with such general policies and regulatory decisions, findings, and determinations.

(c) The Chairman of the Board shall enforce the rules, regulations, and orders of the Board. Except as provided in section 518 of title 28 of the United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman shall represent the Farm Credit Administration in any civil proceeding or civil action brought in connection with the administration of conservatorships and receiverships. Attorneys designated by the Chairman may represent the Farm Credit Administration in any other civil proceedings or civil action when so authorized by the Attorney General under provisions of title 28.

[SEC. 5.11. ORGANIZATION OF THE FARM CREDIT ADMINISTRATION.—The Chairman of the Board, in carrying out the powers and duties now or hereafter vested in the Chairman by this Act and acts supplementary thereto, may establish and fix the powers and the duties of such divisions or other units as the Chairman may deem necessary to the efficient functioning of the Farm Credit Administration and the successful execution of the powers and duties vested in the Board and the Farm Credit Administration. The Chairman of the Board shall appoint such personnel as may be necessary to carry out the functions of the Farm Credit Administration. Officers and employees of the Farm Credit Administration shall be subject to the Ethics in Government Act of 1978 and shall be considered officers or employees of the United States for the purposes of sections 201 through 203, and sections 205 through 209, of title 18 of the United States Code. Officers and employees of the Farm Credit Administration shall be subject to section 5373 of title

5 of the United States Code. The powers of the Chairman as chief executive officer of the Farm Credit Administration may be exercised and performed by the Chairman through such other officers and employees of the Farm Credit Administration as the Chairman shall designate. The operations of the Farm Credit Administration, and the salaries of members of the Board and employees of the Administration, shall be funded and paid for from the fund created under section 5.15 of this Act.]

SEC. 5.11. ORGANIZATION OF THE FARM CREDIT ADMINISTRATION.—(a) Policies of the Board.—The Chairman of the Farm Credit Administration Board, in carrying out the powers and duties vested in the Chairman by this Act, and Acts supplementary thereto, shall be governed by policies of the Board and by such regulatory decisions, findings and determinations as the Board may be law be authorized to make.

(b) APPOINTMENTS.—The Chairman of the Board shall appoint such personnel as may be necessary to carry out the functions of the Farm Credit Administration. The appointment by the Chairman of the heads of major administrative divisions under the Board shall be subject to the approval of the Board.

(c) PERSONNEL.—

(1) APPOINTMENT BY BOARD MEMBERS. B—Personnel employed regularly and full-time in the immediate offices of Board members shall be appointed by each such Board member.

(2) OFFICERS AND EMPLOYEES.—The officers and employees of the agency shall be—

(A) subject to the Ethics in Government Act of 1978 (2 U.S.C. 701 et seq.);

(B) considered officers or employees of the United States for the purposes of sections 201 through 203, and sections 205 through 209, of title 18, United States Code; and

(C) Subject to section 5315 of title 5, United States Code.

(3) DELEGATION.—The powers of the Chairman as chief executive officer necessary for day to day management may be exercised and performed by the Chairman through such other officers and employees of the Administration as the Chairman shall designate, exept that the Chairman may not delegate powers specifically reserved to the Chairman by this Act without Board approval.

(d) FUNDING.—The operations of the Farm Credit Administration, and the salaries of members of the Board and employees of the Administration, shall be funded and paid for from the fund created under section 5.15.

SEC. 5.12. ADVISORY COMMITTEE.—The Chairman of the Board, *subject to the approval of the Board,* may establish one or more advisory committees in accordance with the Federal advisory Committee Act and may appoint to such committee or committees individuals who are members of the Federal Farm Credit Board when such Board is terminated by the Farm Credit Amendments Act of 1985.

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[SEC. 5.15. ALLOCATION OF EXPENSES FOR ADMINISTRATIVE SERVICES BY THE FARM CREDIT ADMINISTRATION; DISPOSITION OF

MONEY.—(a) The Farm Credit Administration shall prior to the first day of each fiscal year estimate the cost of administrative expenses for the ensuring fiscal year in administering this Act, including official functions, and shall apportion the amount so determined among the institutions of the System on such equitable basis as the Farm Credit Administration shall determine, and shall assess against and collect in advance the amounts so apportioned from the institutions among which the apportionment is made.

[(b) The amounts collected pursuant to subsection (a) of this section shall be covered into the Treasury, and credited to a special fund and, without regard to other law, shall be available to the Farm Credit Administration for expenditure during each fiscal year for salaries and expenses of the Farm Credit Administration. As soon as practicable after the end of each such fiscal year, the Farm Credit Adminstration shall determine, on a fair and reasonable basis, the cost of operation of the Farm Credit Administration and the part thereof which fairly and equitable should be allocated to each bank and association as its share of the cost during the fiscal year of the Farm Credit Administration. If the amount so allocated is greater than the amount collected from the bank or other institutions, the difference shall be colleted from such bank or other institutions, and, if less, shall be refunded from the special fund to the bank or other institutions entitled thereto or credited in the special fund to such bank or other institution for use for the same purposes in future fiscal years.]

SEC. 5.15. FARM CREDIT ADMINISTRATION OPERATING EXPENSES FUND.—(a) Determinations Required.—

(1) GENERALLY.—Prior to the first day of each fiscal year, the Farm Credit Administration shall determine—

(A) the cost of administering this Act for the subsequent fiscal year, including expenses for official functions;

(B) the amount of assessments that will be required to pay such administrative expenses, taking into consideration the funds contained in the Administrative Expense Account, and maintain a necessary reserve; and

(C) the amount of assessments that will be required to pay the costs of supervising and examining the Mortgage Corporation established under title VIII.

(2) APPORTIONMENTS.—On the basis of the determinations made under paragraph (1), the Farm Credit Administration shall—

(A) apportion the amount of such assessment among the System institutions on a basis that is determined to be equitable by the Farm Credit Administration;

(B) assess and collect such apportioned amounts from time to time during the fiscal year as determined necessary by the Farm Credit Administration; and

(C) assess and collect from the Mortgage Corporation, from time to time during the fiscal year, the amount specified in paragraph (1)(C).

(b) DEPOSITS INTO FUND.—

(1) TREASURY FUND.—The amounts collected under subsection (a) shall be deposited in the Farm Credit Administration Administrative Expense Account. The Expense Account shall be

maintained in the Treasury of the United States and shall be available, without regard to the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 note) or any other law, to pay the expenses of the Farm Credit Administration.

(2) NONGOVERNMENT FUNDS.—The funds contained in the Expense Account shall not be construed to be Federal government funds or appropriated monies.

(3) INVESTMENT.—

(A) AUTHORITY.—On request of the Farm Credit Administration, the Secretary of the Treasury shall invest and reinvest such amounts contained in the Expense Account as, in the determination of the Farm Credit Administration, are in excess of the amounts necessary for current expenses of the Farm Credit Administration.

(B) RETURNS.—All income earned from such investments and reinvestments shall be deposited in the Expense Account.

(C) TYPE.—Such investments shall be made in public debt securities with maturities suitable to the needs of the Expense Account, as determined by the Farm Credit Administration, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

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SEC. 5.17. ENUMERATED POWERS.—(a) The Farm Credit Administration shall have the following powers, functions, and responsibilities in connection with the institutions of the Farm Credit System and the administration of this Act:

(1) Modify the boundaries of farm credit districts, with due regard for the farm credit needs of the country, approved by the Board, with the concurrence of the district boards involved.

(2) Where necessary or appropriate to carry out the policy and objectives of this Act, issue and amend or modify Federal charters of institutions of the System: Approve change in names of banks operating under this Act approve the merger of districts when agreed to by the boards of the districts involved and by a majority vote of the voting stockholders and contributors to the guaranty funds of each bank for each of such districts, voting in the same manner as is provided in section 4.10 of this Act; [approve mergers of banks operating under the same title of this Act, merger of Federal land bank associations, merger of production credit associations, and the consolidation or division of the territories] *approve mergers and any related activities as provided for in title VII; and the consolidation or division of the territories* that they serve when agreed to by a majority vote of the voting stockholders or contributors to the guaranty fund of each of the institutions involved; and approve consolidations of boards of directors or management agreements when agreed to by a majority vote of the voting stockholders or contributors to the guaranty fund of each of the institutions involved. In issuing charters and certif-

icates of territory for district-wide mergers of associations where stockholders of one or more associations did not approve the merger, the charter of the new or merged association shall not include the territory of the disagreeing association or associations; charters issued during calendar year 1985 for district-wide new or merged associations which included the territory of a disagreeing association shall be revoked and reissued to exclude such territory, unless subsequently agreed to by the board of directors of such association or associations[; and the Farm Credit Administration shall ensure that the board of directors of district banks does not discriminate against the disapproving associations in exercising its supervisory authorities. Such associations shall not be (i) charged any assessment under this Act at a rate higher than that charged other like associations in the district or (ii) discriminated against the provision of any financial service and assistance]. *The Farm Credit Administration Board shall ensure that disapproving associations (A) shall not be charged any assessment under this Act at a rate higher than that charged other like associations in the district, and (B) shall be provided with financial services and assistance on the same basis as other like associations in the district* (including, but not limited to, access to credit and rates of interest on loans and discounts) by a district Farm Credit bank to the association and its member-borrowers. [The Chairman of the Farm Credit Administration Board, after consultation with the respective district board or boards and the board of directors of the Capital Corporation may require two or more banks of the Farm Credit System (other than Central Banks for Cooperatives) operating under the same title to merge if the Chairman determines that one of such banks has failed to meet outstanding obligations of such bank.] *The Farm Credit Administration Board, after consultation with the respective boards of directors of the affected banks, may require two or more banks operating under the same or different titles to merge if the Board determines that one of such banks has failed to meet its outstanding obligations.*

* * * * * * *

(15) Except for associations, approve the salary scale for employees of the institutions of the System, and approve the compensation of the chief executive officer, or such institutions: *Provided,* That, no salary scale or rate of compensation shall be approved under this provision unless determined *by the Board* to be fair and reasonable. *The Board may not delegate its responsibilities under this paragraph.*

(b)(1) At least thirty days prior to publishing any proposal regulation in the Federal Register, the Farm Credit Administration shall transmit a copy of the regulation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. The Farm Credit Administration shall also transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in paragraph (2) of this subsection, no final regulation of the Farm Credit Administration shall become effective prior to

the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of the Congress are in session.

(2) In the case of an emergency, a final regulation of the Farm Credit Administration may become effective without regard to the last sentence of paragraph (1) of this subsection if the Farm Credit Administration notifies in writing the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

(c)(1) If there are any unresolved differences between the Farm Credit Administration and the Board of Governors of the Federal Reserve System as to whether any regulation implementing section 3.7(b) of this Act or the other provisions of title III relating to the authority under section 3.7(b) conforms to national banking policies, objectives, and limitations, simultaneously with promulgation of any such regulation under this Act, and simultaneously with promulgation of any regulation implementing section 2.3 of this Act, the Farm Credit Administration shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in paragraph (2), the regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Farm Credit Administration dealing with the matter of , which regulation was transmitted to Congress on ", the blank spaces therein being appropriately filled.

(2) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided in paragraph (1).

(3) For the purposes of paragraphs (1) and (2) of this subsection—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

((ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

(4) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation.

SEC. 5.18. * * *

SEC. 5.19. EXAMINATIONS.—(a) [Each] *Except for Federal land bank associations, each* institution of the System shall be examined by Farm Credit Administration examiners at such times as [the Chairman of] the Board may determine, but in no event less than once each year. *Each Federal land bank association shall be examined by Farm Credit Administration examiners at such times as the Farm Credit Administration Board may determine, except that each such association shall be examined at least once every 5 years.* Such examinations shall include, but are not limited to, an analysis of credit and collateral quality and capitalization of the institution, and appraisals of the effectiveness of the institution's management and application of policies governing the carrying out of this Act and regulations of the Farm Credit Administration and servicing all eligible borrowers. At the direction of [the Chairman of] the Board, Farm Credit Administration examiners also shall make examinations of the condition of any organization, other than federally regulated financial institutions, to, for, or with which any institution of the System contemplates making a loan or discounting paper. For the purposes of this Act, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank act, the Federal Reserve Act, and Federal Deposit Insurance Act, and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law.

(b)*(1)* Each institution of the System shall make and publish an annual report of condition as prescribed by the Farm Credit Administration. Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles, except with respect to any actions taken by any banks of the System under section 4.8(b), and contain such additional information as the Farm Credit Administration by regulation may require. Notwithstanding the provisions of the preceding sentence and any other provision of this Act, for the period July 1, 1986, through December 31, 1988, the institutions of the Farm Credit System may, on the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, capitalize annually their provision for losses that is in excess of one-half of 1 percent of loans outstanding and amortize such capitalized amounts over a period not to exced 20 years. Such financial statements of System institutions shall be audited by an independent public accountant.

(2) In accordance with the regulations of the Farm Credit Administration and section 6.6, for the period ending December 31, 1992, System institutions are authorized to use the authorities contained in this section.

(3) Any preferred stock issued under section 6.27 shall be subordinated to and impaired prior to, other stock or equities of the institution.

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SEC. 5.22A. UNIFORM CHART OF ACCOUNTS.—(a) IN GENERAL.—A System institution shall comply with a uniform chart of accounts, approved by the Farm Credit Administration, to standardize and facilitate the reporting of System data.

(b) COMPUTERIZED SYSTEM.—If the accounts are maintained by a computer system, each System institution may develop an internal computer system or it may contract out to a vendor under open competitive bidding any or all aspects of the computerized system.

(c) SUBMISSION OF PROPOSAL.—Within 6 months of the date of enactment of the Farm Credit Act Amendments of 1987, each System institution shall submit to the Farm Credit Administration a report on the plan of that institution to bring the operations of the institution into compliance with the uniform chart of accounts.

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PART C—ENFORCEMENT POWERS OF FARM CREDIT ADMINISTRATION

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SEC. 5.35. DEFINITIONS.—As used in this part—

(1) the terms "cease and desist order that has become final" and "order which has become final" mean a cease and desist order, or an order, issued by the Farm Credit Administration with the consent of the System institution or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Farm Credit Administration has been filed and perfected in a court of appeals as specified in section 5.30(b) of this Act, or with respect to which the action of the court in which such petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in section 5.30(b) of this Act, or an order issued under section 5.29 of this Act;

(2) the term "violation" includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation;

(3) the terms "institution in the System", "System institution", and "institution" mean all institutions enumerated in section 1.2 of this Act, any service organization chartered under part D of title IV of this Act, and the Capital Corporation; and

[(4) the term "unsafe or unsound practice" shall have the meaning given to it by the Farm Credit Administration by regulations, rule, or order.]

(4) the term "unsafe or unsound practice" shall—

(A) have the meaning given to it by the Farm Credit Administration by regulation, rule, or order; and

(B) during the period beginning on the date of enactment of the Farm Credit Act Amendments of 1987 and ending December 31, 1992, mean any noncompliance by a System institution, as determined by the Assistance Board in consultation with the Farm Credit Administration, with any term or condition imposed on the institution by the Assistance Board in connection with the exercise of the powers authorized under section 6.6

TITLE VI—FARM CREDIT SYSTEM ASSISTANCE

Subtitle A—Assistance Board

SEC. 6.0. ESTABLISHMENT BOARD.

On the date which is 15 days after the date of enactment of the Farm Credit Act Amendments of 1987, the Farm Credit Administration shall revoke the charter of the Farm Credit System Capital Corporation and shall charter the Farm Credit System Assistance Board (referred to in this Act as the "Assistance Board") that, subject to this subtitle, shall be a Federally chartered instrumentality of the United States.

SEC. 6.1. PURPOSES.

The purposes of the Assistance Board shall be to carry out a program to provide assistance, to and protect the stock of borrowers of the institutions of the Farm Credit System, and to assist in restoring System institutions to economic viability and permitting such institutions to continue to provide credit to farmers, ranchers, and the cooperatives of such, at reasonable and competitive rates.

SEC. 6.2. BOARD OF DIRECTORS.

(a) MEMBERSHIP.—The Board of Directors of the Assistance Board shall consist of five members of which—

(1) one member shall be the Secretary of the Treasury, or an employee of the Department of the Treasury as designated by the Secretary;

(2) one member shall be the Secretary of Agriculture, or an employee of the Department of Agriculture as designated by the Secretary;

(3) one member shall be the Chairman of the Board of Governors of the Federal Reserve System, or a Board member or employee of the Federal Reserve System as designated by the Chairman; and

(4) two members experienced in financial matters shall be appointed by the President, by and with the advice and consent of the Senate, who shall not be members of the same political party.

(b) CHAIRMAN.—The Board of Directors shall elect, on an annual basis, a Chairman from among the members of the Board.

(c) TERMS OF OFFICE, SUCCESSION, AND VACANCIES.—

(1) TERMS OF OFFICE AND SUCCESSION.—The term of each member of the Board of Directors appointed under paragraph (4) of subsection (a) shall be until such time as the Assistance Board is terminated.

(2) VACANCIES.—Vacancies on the Board of Directors shall be filled in the same manner as the vacant position was previously filled.

(d) COMPENSATION OF BOARD MEMBERS.—Members of the Board of Directors of the Assistance Board—

(1) appointed under paragraphs (1), (2), and (3) of subsection (a) shall receive reasonable allowances for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Assistance Board, as set forth in the

bylaws issued by the Board of Directors of the Assistance Board, except that such level shall not be in excess of the maximum fixed by subchapter 1 of chapter 57 of title 5, United States Code, for officers and employees of the United States, and

(2) appointed under paragraph (4) of subsection (a) shall receive compensation for the time devoted to meetings and other activities at a daily rate not to exceed the daily rate of compensation prescribed for Level IV of the Executive Schedule under section 5315 of title 5, United States Code, and reasonable allowances for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Assistance Board, as set forth in the bylaws issued by the Board of Directors of the Assistance Board, except that such level shall not be in excess of the maximum fixed by subchapter 1 of chapter 57 of title 5, United States Code, for officers and employees of the United States.

(e) RULES AND RECORDS.—The Board of Directors of the Assistance Board shall adopt such rules as it may deem appropriate for the transaction of the business of the Assistance Board, and shall keep permanent and accurate records and minutes of its acts and proceedings.

(f) QUORUM REQUIRED.—A quorum shall consist of three members of the Board of Directors. All decisions of the Board shall require an affirmative vote of at least a majority of the members voting.

(g) CHIEF EXECUTIVE OFFICER.—A chief executive officer of the Assistance Board shall be selected by the Board of Directors of the Assistance Board and shall serve at the pleasure of the Board.

SEC. 6.3. CORPORATE POWERS.

(a) IN GENERAL.—The Assistance Board shall be a body corporate that shall have the power to—

(1) operate under the direction of its Board of Directors;

(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

(3) provide for one or more vice presidents, a secretary, a treasurer, and such other officers, employees, and agents, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

(4) adopt a salary scale for officers and employees of the Assistance Board, in accordance with title 5, United States Code, for officers and employees of the United States;

(5) prescribe by its Board of Directors its bylaws, that shall be consistent with law, and that shall provide for the manner in which—

(A) its officers, employees, and agents are selected;

(B) its property is acquired, held, and transferred;

(C) its general business is conducted; and

(D) the privileges granted by law are exercised and enjoyed;

(6) with the consent of any executive department or independent agency, use the information, services, staff, and facilities of such in carrying out this title;

(7) enter into contracts and make advance, progress, or other payments with respect to such contracts;

(8) sue and be sued in its corporate name, and complain and defend in courts of competent jurisdiction;

(9) acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to its business;

(10) obtain insurance against loss;

(11) modify or consent to the modification of any contract or agreement to which it is a party or in which it has an interest under this title;

(12) deposit its securities and its current funds with any member bank of the Federal Reserve System or any insured State nonmember bank (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)) and pay fees therefor and receive interest thereon as may be agreed; and

(13) exercise other powers as set forth in this title, and such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with this title.

(b) POWER TO REMOVE, AND JURISDICTION.—Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Assistance Board shall be a party, shall be deemed to arise under the laws of the United States, and the United States District Court for the District of Columbia shall have original jurisdiction over such. The Assistance Board may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia.

SEC. 6.4. CERTIFICATION OF ELIGIBILITY TO ISUE STOCK.

(a) ELIGIBILITY TO REQUEST CERTIFICATION.—

(1) IN GENERAL.—At such time as the book value of the stock participation certificates and other similar equities of a System institution, based on generally accepted accounting principles, is less than the par value of the stock or the face value of the certificates or equities, such institution shall be eligible to request certification to issue preferred stock under section 6.27, and may request that the Assistance Board grant such certification.

(2) CONSIDERATION OF REQUEST.—The Assistance Board, on a request by a System institution for certification, shall consider such request, taking into consideration the purposes of this title, and may at its discretion grant such certification.

(b) MANADATORY DETERMINATION OF ELIGIBILITY—

(1) IN GENERAL.—The Assistance Board shall determine whether to certify a System institution as eligible to issue preferred stock under section 6.27, if—

(A) the institution request such certification,

(B) the book value of the stock, participation certificates, and other similar equities of the institution, based on generally accepted accounting principles, has declined to 75 percent of the par value of the stock or the face value of the certificates or equities; and

(C) the institution agrees to meet the terms and conditions specified by the Assistance Board pursuant to section 6.6.

(2) EFFECTIVE DATE OF CERTIFICATION.—If the determination of the Assistance Board is to certify the institution under paragraph (1), such certification shall be effective at the time of such determination.

SEC. 6.5. ASSISTANCE.

(a) IN GENERAL.—The Assistance Board shall assist an institution that has been certified under section 6.4 by one or more of the following—

(1) authorizing the institution to issue preferred stock, as described in section 6.27, in amounts necessary to maintain the book value of stock, participation certificates, and other similar equities of the institution, at the level provided for in subsection (c);

(2) in the case of high-cost debt for which the institution is primarily liable, authorizing the institution to issue preferred stock, as described in section 6.27, in an amount equal to the premium that would be required by the holder of the debt for the institution to retire the debt at current market value;

(3) on a request by the institution, authorizing the issuance of preferred stock, as described in section 6.27, so as to provide assistance to facilitate the merger of the requesting institution with one or more other System institutions if such merger is approved by the stockholders of the merging institutions in accordance with title VII; or

(4) providing assistance by such other methods as the Assistance Board determines appropriate.

(b) DEFINITION OF HIGH-COST DEBT.—For purposes of subsection (a)(2), the term "high-cost debt" means securities or similar obligations issued prior to January 1, 1986, that have a maturity date of December 31, 1987, or later and bear a rate of interest in excess of the current market rate for similar securities or obligations.

(c) MINIMUM EQUITY VALUE.—The Assistance Board shall authorize the issuance, by a certified institution, of amounts of preferred stock sufficient to—

(1) maintain the value of stock, participation certificates and other similar equities at no less than 75 percent of the par value of the stock or the face value of the certificates or equities, as determined under generally accepted accounting principles; and

(2) strengthen the institution to a point where it is economically viable, and capable of delivering credit at reasonable and competitive rates.

SEC. 6.6. SPECIAL POWERS.

(a) IN GENERAL.—In the case of a System institution that requests certification under section 6.4, the Assistance Board may—

(1) require approval of the business, operating, and investment plans and policies for the institution;

(2) direct the Farm Credit Administration Board, if one or more of the conditions described in section 4.12(b) are met, to appoint a conservator for the institution, in accordance with such section, with instructions, acceptable to the Assistance

Board, to evaluate the operations of the institution and report to the Farm Credit Administration Board and the Assistance Board on the possibility of restoring the institution to sound financial condition:

(3) request that the Farm Credit Administration Board or the Farm Credit Administration, as appropriate—

(A) approve or require a merger or consilidation of the institution to the extent authorized under this Act;

(B) initiate action to liquidate the institution or to appoint a receiver under section 4.12(b); or

(C) exercise an enforcement power authorized under this Act;

(4) require approval of the terms and conditions of any debt issuances of the institution;

(5) require approval of the policy on credit standards used, and the policy on rates of interest charged on loans, by the institution, including requiring that—

(A) the institution set interest rates at levels necessary to ensure that the cost of money to the institution reflects the marginal cost to the institution of borrowing and additional amount of money at the time a new loan is made; and

(B) loans primarily secured by real estate mortgages shall not exceed 85 percent of the appraised agricultural value of the real estate security, or 75 percent of the current market value of the real estate security, whichever is greater;

(6) require approval of the design of management information and accounting systems at the institution, and the continued use by the institution of regulatory accounting practices in accordance with sections 4.8(b) and 5.19(b);

(7) require approval of—

(A) the hiring policies of the institution:

(B) the salary scale for the chief executive officer, other managers, and directors of the institution, except that to the extent that the exercise of authority by the Assistance Board under this subparagraph overlaps or duplicates the authority of the Farm Credit Administration under sections 5.5 and 5.17(a)(15), the Assistance Board shall have exclusive responsibility for providing such approval;

(C) any change in the management of the institution; and

(D) policy decisions regarding continued employment and promotion of the officials referred to in subparagraph (B); and

(8) take such other action as the Asssistance Board determines may be necessary to establish prudent operating practices at the institution and to return the institution to a sound financial condition.

(b) LIQUIDATION.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, if the Assistance Board determines that the cost of making assistance available to an institution under this title exceeds the cost of liquidation the institution, the Assistance Board may—

(A) refuse to provide, or continue, certification to the institution under section 6.4; and

(B) request the Farm Credit Administration to liquidate such institution.

(2) COST OF LIQUIDATION.—As used in this section, the term "cost of liquidating the institution" includes—

(A) the amount by which the par value of stock, and the face value of participation certificates and other similar equities exceed the book value, as determined under generally accepted accounting principles, of such stock, certificates, and other equities, at the time of liquidation;

(B) the difference between the outstanding amount of principal due on loans made by the institution (less an allowance for loan losses) and the amount at which such loans can be slod to third parties at the time of liquidation:

(C) the difference between the carrying values for financial reporting purposes, as defined under generally accepted accounting principles, of all other assets of the institution and the amount at which such assets can be sold to third parties at the time of liquidation.

(D) the amount in excess of the carrying values of liabilities of the institution for financial reporting purposes, as defined under generally accepted accounting principles, required to be paid to third parties at the time of liquidation for the agreement of such parties to pay or assume such liabilities;

(E) the estimated costs of holding any or all assets and liabilities of the institution until such assets and liabilities are disposed of;

(F) the estimated costs of terminating employees of the institution, including the costs of severance pay and benefit programs that are available to employees on termination of employment;

(G) the estimated required costs of termination employee benefit plans of the institution;

(H) the estimated costs of terminating leases and other contractural obligations entered into by the institution;

(I) the estimated costs of administrative, legal, and all other actions necessary to dispose of all assets and liabilities of the institution; and

(J) all other costs reasonably expected to be incurred by the institution or by other System institutions as a result of the liquidation.

(3) EXPANSION OF TERRITORY.—If the Farm Credit Administration liquidates a System institution in acoordance with paragraph (l), the Farm Credit Administration shall ensure that the credit needs of eligible persons in the territory formerly served be the liquidated institution are adequately met through—

(A) the expansion of the territory of an existing System institution to cover the territory affected by the liquidation;

(B) the chartering of a new institution to cover such territory; or

(C) a combination of the alternatives provided for in subparagraphs (A) and (B).

(c) REPORT.—On January 1, and July 1, of each year the Assistance Board shall submit, to the Committee on Agriculture of the

House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report that describes the manner in which System institutions that are certified to issue preferred stock under section 6.27 are using amounts received under such certification to—

(1) lower interest rates charged to borrowers on loans made by such institutions; and

(2) restore financial solvency to such institutions.

SEC. 6.7. RESTRUCTING SYSTEM BORROWER DEBT.

(a) NATIONAL SPECIAL ASSET COUNCIL.—

(1) ESTABLISHMENT.—A National Special Asset Council shall be established by the Assistance Board to—

(A) monitor compliance with the restructuring requirements of this section by System institutions certified to issue preferred stock under section 6.27, and by special asset groups established under subsection (b); and

(B) review a sample of determinations made by each special asset group that a loan will not be restructured.

(2) REVIEW OF DETERMINATION.—The National Special Asset Council shall review a sufficient number of determinations made by each special asset group to foreclose on any loan to assure the Council that such group is complying with this section. With regard to each determination reviewed, the Council shall make an independent judgment on the merits of the decision to foreclose rather than restructure each loan.

(3) RESTRUCTURING.—With regard to any determination reviewed under paragraph (2), if the National Special Asset Council determines that restructuring the loan will be more advantageous to the System institution than foreclosure or other collection procedures—

(A) the Council shall prepare a restructuring plan for the loan; and

(B) the System institution shall be required to implement that restructuring plan.

(4) NONCOMPLIANCE.—If the National Special Asset Council determines that any special asset group is not in substantial compliance with this section, the Council shall notify the group of the determination, and may take such other action as the Council considers necessary to assure that such group complies with this section.

(b) SPECIAL ASSET GROUPS.—

(1) ESTABLISHMENT.—If a System institution in a district is certified to issue preferred stock under section 6.27, within 30 days of such certification, the district board of such district shall establish a special asset group that shall review each determination by such institution in the district that a loan will not be restructured.

(2) RESTRUCTURING PLAN.—If a special asset group determines under paragraph (1) that a loan under review should be restructured, the group shall prescribe a restructuring plan for the loan that the System institution shall be required to implement.

(3) EVALUATION.—With respect to loans designated as ineligible for restructuring by a special asset group, the special asset

group shall submit to the National Special Asset Council a report evaluating the loan and the basis for the determination that the loan cannot be restructured. If, within 30 days after the submission of such report, the special asset group has received no notification from the National Special Asset Council that the loan must be restructured, the determination of the special asset group shall be considered to be affirmed.

(c) RESTRUCTURING STANDARDS.—In determining whether a loan will be restructured, the National Special Asset Council, each special asset group, and each System institution certified under section 6.4 shall take into consideration the restructuring standards specified in section 4.14A(b)(1).

(d) REQUIREMENTS FOR RESTRUCTURING BY SYSTEM INSTITUTIONS.—

(1) EXISTING NONACCRUAL LOANS—Within 9 months after a System institution is certified under section 6.4, such institution shall review each loan that has not been previously restructured and that is in nonaccrual status on the date of the certification of the institution and determine whether the loan will be restructured.

(2) NEW NONACCRUAL LOANS.—For loans placed in nonaccural status after an institution is certified, the institution shall determine, within 6 months after any such loan is placed in nonaccrual status, whether the loan will be restructured.

(e) EFFECT OF RESTRUCTURING ON BORROWER STOCK.—

(1) FEDERAL LAND BANKS—

(A) IN GENERAL.—If a Federal land bank forgives any of the principal outstanding on a loan made to any borrower, the Federal land bank association of which the borrower is a member and stockholder, with respect to the loan for which principal is forgiven, shall cancel borrower stock by the same percentage as the loan principal is reduced, and may cancel the same dollar amount of borrower stock.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the borrower shall be entitled to retain one share of stock in order to maintain membership and a voting interest in the association.

(2) PRODUCTION CREDIT ASSOCIATIONS—

(A) IN GENERAL.—If a production credit association forgives any of the principal outstanding on a loan made to any borrower, with respect to the loan for which principal is forgiven, the production credit association shall cancel borrower stock by the same percentage as the loan principal is reduced, and may cancel the same dollar amount of borrower stock.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the borrower shall be entitled to retain one share of stock in order to maintain membership and a voting interest in the association.

(f) APPLICATION.—This section shall not apply to the Central Bank for Cooperatives, a bank for cooperatives, or any System institution that is not certified under section 6.4.

(g) DEFINITIONS.—As used in this section, the terms "application for restructuring", "cost of foreclosure", "foreclosure proceeding",

"restructure", and "restructuring", shall have the same meanings given such terms in section 4.14A(e).

SEC. 6.8. ADMINISTRATION.

(a) EXPENSES.—The administrative expenses of the Assistance Board, including the expenses of the National Special Asset Council, shall be paid for by the Financial Assistance Corporation, established in section 6.20, from funds in the Assistance Fund established in section 6.25, except that the total administrative expenses of the Assistance Board shall not exceed—

(1) in fiscal year 1988, $2,000,000; and

(2) in each subsequent fiscal year, an amount equal to the ceiling for the prior fiscal year, increased by 5 percent.

(b) INTERIM FUNDING.—Prior to the availability of funding from the Assistance Fund, the Assistance Board may use the revolving fund established under section 4.0. Such amounts used shall be repaid to the revolving fund out of the Assistance Fund within the same fiscal year that such funds were received by the Assistance Board.

(c) ACCESS TO FCA DOCUMENTS.—The Assistance Board shall have access to all reports of examination and supervisory documents of the Farm Credit Administration, and relevant supporting material for the purpose of carrying out the special powers of the Assistance Board under section 6.6, under terms and conditions that are acceptable to the Farm Credit Administration Board, as are necessary and appropriate to protect the confidentiality of the documents and materials.

SEC. 6.9. LIMITATION OF POWERS.

(a) PURPOSES.—The powers of the Assistance Board under this title shall be exercised only for the purposes specified in this title and shall not be exercised in a manner that would result in the Assistance Board supplanting the Farm Credit System lending institutions as the primary providers of credit and other financial services to farmers, ranchers, and the cooperatives of such.

(b) ADMINISTRATION OF LOANS.—The powers of the Assistance Board under this title shall not include the management, administration, or disposition of any loans or other assets owned by other System institutions, or the providing of technical assistance or other related services to other System institutions in connection with the administration of loans owned by such other institutions, except as otherwise specifically provided for in section 6.6.

SEC. 6.10. SUCCESSION OF THE CORPORATION.

(a) LIABILITIES.—On the issuance by the Farm Credit Administration of the charter for the Assistance Board under this subtitle, the Assistance Board shall succeed to the assets of and assume all debts, obligations, contracts, and other liabilities of the Farm Credit System Capital Corporation (hereinafter referred to in this section as "the predecessor corporation") chartered under part D1 of title IV (prior to the repeal of such part by section 106(a)(5) of the Farm Credit Act Amendments of 1987), matured or unmatured, accrued, absolute, contingent or otherwise, and whether or not reflected or reserved against on balance sheets, books of accounts, or records of the predecessor Corporation.

(b) CONTRACTS.—The existing contractual obligations, security instruments, and title instruments of the predecessor Corporation shall, by operation of law and without any further action by the Farm Credit Administration, the predecessor corporation, or any court, become and be converted into obligations, entitlements, and instruments of the Assistance Board chartered under this subtitle.

(c) ADJUSTMENT OF ASSESSMENTS.—Not later than 15 days after the issuance of the charter of the Assistance Board, the Board shall retire all debt and equity obligations issued to any System institution under section 4.28G(a)(14) or 4.28H as in effect before the date of enactment of the Farm Credit Act Amendments of 1987, at the book value of such obligations (as determined as of such date of enactment) and, shall pay such amounts to the holders of such debt and equity obligations.

(d) SURPLUS FUNDS.—To the extent that, on the extinguishing of liabilities assumed by the Assistance Board under this section, and on full performance or other final disposition of contract obligations of the Assistance Board, there remain surplus funds attributable to such obligations or contracts, the Assistance Board shall distribute such surplus funds among the System institutions that contributed funds to the predecessor Corporation on the basis of the relative amount of funds so contributed by each institution.

(e) PRESERVATION AGREEMENTS.—In consideration of the benefits, both direct and indirect, received by each System bank and association, individually and collectively, under this Act, any amount paid by a System bank to another System bank under the Federal Land Bank Capital Preservation Agreement, and the 37-Bank Capital Preservation Agreement, shall be retained by the recipient bank, and any obligation accrued by a System bank under such agreements on or before September 30, 1986, but not paid on or before the date of enactment of the Farm Credit Act Amendments of 1987, shall be paid in accordance with such agreements by such contributing bank in the amounts as stated in the 1986 audited financial reports of such banks, notwithstanding any reservation, qualification, or condition expressed by the System bank accruing or reporting the obligation.

SEC. 6.11. EFFECT OF REGULATIONS; AUDITS.

(a) ISSUANCE.—The Assistance Board may issue such regulations, policies, procedures, guidelines, or statements as the Board considers necessary or appropriate to carry out this title, all of which shall be issued and enforced without regard to subchapter II of chapter 5, of title 5, United States Code.

(b) REGULATION BY FARM CREDIT ADMINISTRATION.—The Assistance Board shall not be subject to regulations by the Farm Credit Administration.

(c) AUDITS.—The Assistance Board shall not require an audit or examination of a System institution that would be duplicative of an audit or examination that is conducted under other provisions of law.

SEC. 6.12. TERMINATION.

The Assistance Board and the authority provided by this title shall terminate on December 31, 1992.

SEC. 6.13. TRANSITIONAL PROVISIONS.

(a) EXERCISE OF POWERS OF THE ASSISTANCE BOARD.—

(1) IN GENERAL.—Except as provided in paragraph (2), the powers of the Assistance Board under this title shall be exercised by the Farm Credit Administration Board until the issuance of the charter of the Assistance Board, or such later date not to exceed 30 days thereafter, as may be requested by the Assistance Board.

(2) LIMITATION.—Any assistance provided to System institutions by the Farm Credit Administration in accordance with this section shall be provided from, and shall not be in excess of the amounts contained in the revolving fund established under section 4.0.

(b) ISSUANCE OF STOCK.—Each institution that receives assistance from the Farm Credit Administration during the interim period specified in subsection (a)(1), in consideration thereof, shall issue preferred stock to the Financial Assistance Corporation in an amount equal to the amount of such assistance. Payments by the Financial Assistance Corporation under subsection (c) shall be considered to be payments to each such institution for such stock.

(c) REPAYMENT.—The Financial Assistance Corporation shall pay to the Farm Credit Administration the full amount of all financial assistance provided by the Administration in accordance with this section from all or part of the proceeds from the sale of the first issue of obligations by the Financial Assistance Corporation in accordance with section 6.26.

Subtitle B—Financial Assistance Corporation

SEC. 6.20. ESTABLISHMENT OF CORPORATION.

Not later than 5 days after the date of enactment of the Farm Credit Act Amendments of 1987, the Farm Credit Administration shall charter the Farm Credit System Financial Assistance Corporation (referred to in this Act as the Financial Assistance Corporation) which shall be—

(1) an institution of the Farm Credit System; and

(2) a Federally chartered instrumentality of the United States.

SEC. 6.21. PURPOSE.

The purpose of the Financial Assistance Corporation shall be to carry out a program to provide capital to institutions of the Farm Credit System that are experiencing financial difficulty.

SEC. 6.22. BOARD OF DIRECTORS.

(a) BOARD OF DIRECTORS.—

(1) COMPOSITION.—The Board of Directors shall consist of the Board of Directors of the Federal Farm Credit Banks Funding Corporation (referred to in this Act as the "Funding Corporation").

(2) CHAIRMAN.—The Board of Directors shall elect, on an annual basis. a Chairman from among the members of the Board.

(3) COMPENSATION.—Members of the Board of Directors of the Financial Assistance Corporation shall receive compensation for

the time devoted to meetings and other activities of the Board and reasonable allowances for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Board in amounts not in excess of levels set by the Farm Credit Administration Board.

(b) RULES AND RECORDS.—The Board of Directors of the Financial Assistance Corporation shall adopt such rules as it may deem appropriate for the transaction of its business and shall keep permanent and accurate records and minutes of its acts and proceedings.

(c) QUORUM REQUIRED.—No business may be conducted at a meeting of the Board of Directors of the Financial Assistance Corporation unless a quorum of the members of the Board is present, and a vote to approve an action requires a majority vote of the members voting.

(d) CHIEF EXECUTIVE OFFICER.—A chief executive officer of the Financial Assistance Corporation shall be selected by the Board of Directors of the Financial Assistance Corporation and shall serve at the pleasure of the Board.

SEC. 6.23. STOCK.

The Financial Assistance Corporation shall issue stock with a par value of $5 to System institutions, as provided for in this subtitle, and such stock shall not be transferable.

SEC. 6.24. CORPORATE POWERS.

(a) IN GENERAL.—The Financial Assistance Corporation shall have the power under its charter to—

(1) operate under the direction of its Board of Directors;

(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

(3) provide for such officers, employees, and agents, including joint employees with the Funding Corporation, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

(4) adopt a salary scale for officers and employees of the Financial Assistance Corporation, in accordance with the directives of the Board of Directors;

(5) prescribe by its Board of Directors bylaws, that are not inconsistent with law, and that shall provide for the manner in which—

(A) its officers, employees, and agents are selected;

(B) its property is acquired, held, and transferred;

(C) its general business is conducted; and

(D) the privileges granted by law are exercised and enjoyed;

(6) enter into contracts and make advance. progress, or other payments with respect to such contracts;

(7) sue and be sued in its corporate name and complain and defend in courts of competent jurisdiction;

(8) acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property, and otherwise exercise all the usual incidents of ownership or property necessary and convenient to its business;

(9) obtain insurance against loss;

(10) modify or consent to modification of any contract or agreement to which it is a party or in which it has an interest under this subtitle;

(11) borrow from any commercial bank on its own individual responsibility and on such terms and conditions as it may determine with the approval of the Farm Credit Administration;

(12) deposit its securities and its current funds with any member bank of the Federal Reserve System or any insured State nonmember bank (as defined i section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b) and pay fees therefor and receive interest thereon as may be agreed; and

(13) perform such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with its charter and this subtitle.

(b) POWER TO REMOVE, AND JURISDICTION.—Notwithstanding any other provision of law, and civil action, suit, or proceeding to which the Financial Assistance Corporation shall be a party, shall be deemed to arise under the laws of the United States, and the United States District Court for the District of Columbia shall have original jurisdiction over such. The Financial Assistance Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia.

Sec. 6.25. ACCOUNTS.

(a) FARM CREDIT ASSISTANCE FUND.—

(1) ESTABLISHMENT.—The Financial Assistance Corporation shall establish an account called the Farm Credit Assistance Fund (referred to in this Act as the "Assistance Fund") which shall be available to the Financial Assistance Corporation as a revolving fund to carry out this subtitle. The monies of such Assistance Fund shall be invested in direct obligations of the United States or obligations guaranteed by the United States.

(2) FUNDING.—The Assistance Fund shall be funded through the issuance of debt obligations and payments, as provided in section 6.26, and payments, as provided in section 6.28.

(b) FINANCIAL ASSISTANCE CORPORATION TRUST FUND.—The Financial Assistance Corporation shall establish an account called the Financial Assistance Corporation Trust Fund (referred to in this Act as the "Trust Fund") that shall consist of securities of the United States Treasury purchased by the Financial Assistance Corporation with the funds received from purchase of stock from the Financial Assistance Corporation by System institutions under section 6.29.

SEC. 6.26. DEBT OBLIGATIONS.

(a) ISSUANCE.—During the period beginning 61 days after the date of enactment of the Farm Credit Act Amendments of 1987 and ending September 30, 1992, the Financial Assistance Corporation, subject to the approval of the Assistance Board, may issue uncollateralized bonds, notes. debentures, and similar obligations, guaranteed as to the timely payment of principal and interest by the Secretary of the Treasury as set forth in subsection (d), with semiannual interest coupon payments and a maturity period of 15 years—

(1) in an aggregate amount not to exceed $2,800,000,000; and

(2) beginning January 1, 1989, in an additional amount, not to exceed $1,200,000,000, if—

(A) debt obligations have been issued by the Corporation to the full extent authorized under paragraph (1);

(B) the Assistance Board determines that such additional funds are needed to carry out this title; and

(C) the Assistance Board submits a report to Congress, at least 90 days prior to the issuance of any debt obligations under this subsection, that sets forth the determination of the Assistance Board that such additional debt obligations should be issued, and that contains a detailed evaluation supporting the determination.

(b) CONDITIONS.—The debt obligations shall be in such forms and denominations, bear such rates of interest, be subject to such conditions, be issued in such manner, and sold at such prices as may be prescribed by the Financial Assistance Corporation.

(c) INTEREST PAYMENTS.—

(1) PAYMENT OF INTEREST DURING FIRST 5-YEAR PERIOD.—During each year of the first 5-year period of the 10-year period beginning on the date of issuance of each obligation under subsection (a), the Financial Assistance Corporation shall pay, without recourse to System institutions, all of the interest due on such obligation.

(2) PAYMENT OF INTEREST DURING SECOND 5-YEAR PERIOD.—

(A) IN GENERAL.—During each year of the second 5-year period of the 10-year period beginning on the date of issuance of each obligation under subsection (a), the Financial Assistance Corporation shall pay all of the interest due on such obligation.

(B) PAYMENT BY SYSTEM INSTITUTIONS TO FINANCIAL ASSISTANCE CORPORATION.—During each year of the second 5-year period, System institutions shall pay to the Financial Assistance Corporation 50 percent of the interest due on the obligations, except that System institutions shall pay an additional 10 percent of the interest expense for each 1 percent that the unallocated retained earnings of the System, under generally accepted accounting principles, exceed 5 percent of net assets (total assets less allowance for loan losses) based on a year-end financial statement for the preceding year.

(C) ALLOCATION.—Each System institution shall pay to the Financial Assistance Corporation a proportionate share of the interest due by System institutions under this paragraph, according to the amount of the performing loan volume of the institution (based on the average loan volume for the preceding year) in relation to the total performing loan volume of the System.

(3) PAYMENTS BY TREASURY.—The Secretary of the Treasury shall pay to the Financial Assistance Corporation, in a timely manner, the balance of the interest not paid by the System institutions as set forth in section 6.28.

(4) PAYMENT OF INTEREST AFTER FIRST 10-YEAR PERIOD.—During each year of the third 5-year period of the 15-year period beginning on the date of issuance of each obligation under sub-

section (a), the Financial Assistance Corporation shall pay all of the interest due on such obligation. During each year of such 5-year period, System institution's shall pay the entire amount of interest due on the obligation according to the procedures set forth in paragraph (2)(C). Such payments shall be made to the Financial Assistance Corporation at such times as the Financial Assistance Corporation shall determine.

(d) REFINANCING AND PAYMENT OF PRINCIPAL.—

(1) IN GENERAL.—

(A) TIME OF REPAYMENT.—Upon maturity of an obligation issued under subsection (a), the obligation shall be repaid by the Financial Assistance Corporation.

(B) PAYMENTS BY INSTITUTIONS.—In order to enable the Financial Assistance Corporation to repay the obligation referred to in subparagraph (A), each institution that issued preferred stock under section 6.27 with respect to such obligation (or the successor thereto) shall pay to the Financial Assistance Corporation, prior to the maturity date of such obligation, an amount equal to the par value of such stock outstanding for such institution.

(C) FUNDS FOR PAYMENTS.—Payments under subparagraph (B) shall be made by each such institution from the funds of the institution, or from funds raised by the institution through the issuance of debt obligations, without a collateral requirement and without any guarantee by the Secretary of the Treasury.

(2) REFINANCED OBLIGATIONS.—The refinanced obligations issued under paragraph (1) shall be solely the obligation of the institutions refinancing such, and sections 4.3 and 4.4 shall not be applicable to such obligations.

(3) DEFAULTS.—

(A) INTEREST.—

(i) PAYMENT BY CORPORATION.—If a System institution defaults on the payment of interest due under this subsection during the first 15 years after an obligation is issued under subsection (a), the Financial Assistance Corporation shall pay the amount of the interest due by the System institution out of the Trust Fund, and shall recover the amount of the interest due from the defaulting System institution, and such amount shall be paid to the Trust Fund.

(ii) PAYMENT BY RESERVE ACCOUNT.—If the Financial Assistance Corporation has not recovered the full amount of interest due from the defaulting institution by the end of the 12-month period beginning on the date of default, such uncollected interest shall be paid to the Trust Fund from the Reserve Account established under section 4.9A, to the full extent of funds available in the Reserve Account as of the date the Financial Assistance Corporation notified the Reserve Account Board of amounts due under this section.

(iii) PAYMENT BY REMAINING INSTITUTIONS.—To the extent that the payment from the Reserve Account is insufficient to result in the reimbursement of the Trust

Fund, the remaining balance shall be added to the amount of interest due by remaining System institutions, under this subsection, and each remaining System institution shall pay a proportionate share of the uncollected interest according to the amount of the performing loan volume of the institution (based on the average loan volume for the preceding year) in relation to the total performing loan volume of the System, and such amounts shall be paid to the Trust Fund.

(B) PRINCIPAL.—

(i) EVALUATION.—Not later than 90 days prior to the maturity of any obligation issued under subsection (a), the Farm Credit Administration shall complete an evaluation of the general financial condition of each System institution that issued preferred stock under section 6.27 with respect to such obligation to determine whether such System institution (or the successor thereto) will be able to redeem such stock at par value on the maturity of the obligation, and continue to remain a viable institution capable of providing credit to eligible borrowers at equitable and competitive interest rates.

(ii) AVAILABILITY OF EVALUATION.—A copy of the evaluation required under clause (i) shall be furnished to the Secretary of the Treasury and the appropriate committees of Congress.

(iii) PURCHASE OF SECRETARY OF THE TREASURY.—If the Farm Credit Administration determines, in consultation with the Secretary of the Treasury, on the basis of the evaluation required in clause (i), that a System institution will be unable to redeem such stock at par value in a timely manner, either directly or through the use of funds obtained by such institution through the issuance of uncollateralized and nonguaranteed obligations, and remain a viable and competitive institution, the Financial Assistance Corporation shall withdraw funds from the Trust Fund in an amount equal to the par value of the preferred stock issued by such institution under section 6.27 to enable the institution to pay the principal of the maturing obligation. Simultaneously with such withdrawal of funds from the Trust Fund, the Financial Assistance Corporation shall transfer to the Reserve Account an equal amount, at par value, of preferred stock of such institution. To the extent that the trust fund is insufficient to enable the Financial Assistance Corporation to pay the full principal of the maturing obligation, the Reserve Account shall be used by the Reserve Account Board to purchase, at par value, the preferred stock issued by such institution under section 6.27 to enable the Financial Assistance Corporation to pay the principal of the maturing obligation. To the extent that the Reserve Account is insufficient to enable the Financial Assistance Corporation to pay the full principal of the maturing

obligation, the Secretary of the Treasury shall purchase, at par value, the remaining quantity of the preferred stock issued by such institution to enable the Financial Assistance Corporation to make such full payment. For that purpose, the Secretary of the Treasury may use, as a public debt transaction, the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code. The purposes for which such securities may be issued under such title are extended to include such purchases of stock. Any preferred stock transferred to, or purchased by, the Reserve Account Board under this clause shall be retired by the issuing institution at such times and under such terms and conditions as are agreed to between the Reserve Account Board and such institution.

(C) RECOURSE BY OTHER SYSTEM INSTITUTIONS.—A defaulting institution shall be liable to the remaining System institutions for the amount of any interest paid by the remaining institutions under this paragraph.

(4) PAYMENT BY UNITED STATES.—

(A) INABILITY TO PAY.—Notwithstanding any other provision of this Act, if the Financial Assistance Corporation is unable to pay the principal or interest of any obligation, issued under subsection (a), as required in this subtitle, the Secretary of the Treasury shall pay to the Financial Assistance Corporation the amount due which shall be used by the Financial Assistance Corporation to pay the obligation.

(B) RECOVERY.—

(i) INTEREST PAYMENTS.—In each instance in which the Secretary of the Treasury is required to make a payment under subparagraph (A) to the Financial Assistance Corporation as a result of a default made by a System institution on interest due from such System institution under subsection (c), the Secretary of the Treasury shall recover the amount of the payments the Secretary made, with respect to each defaulting institution, from such defaulting institution. If the Secretary has not recovered the full amount due from the defaulting institution by the end of the 12-month period beginning on the date of payment by the Secretary, the uncollected amount shall be paid to the Secretary from the Reserve Account established under section 4.9A.

(ii) PRINCIPAL PAYMENTS.—In each instance in which the Secretary of the Treasury is required under paragraph (3)(B)(iii) to purchase preferred stock issued by a System institution under section 6.27, the Reserve Account Board shall use funds deposited in the Reserve Account to repurchase, at par value, such stock from the Secretary of the Treasury as funds become available for such repurchase.

(iii) PRIORITY.—Notwithstanding any other provision of this Act except for section 4.9A(e)(4), during any year in which payments are due to the Secretary of the Treasury from the Reserve Account under clause (i), or

preferred stock held by the Secretary is due to be repurchased by the Reserve Account under clause (ii), the funds in such Account, and all funds deposited in such Account during such year, shall be used first for the purposes specified in clauses (i) and (ii).

SEC. 6.27. PREFERRED STOCK.

(a) ISSUANCE.—

(1) IN GENERAL.—Each System institution that is certified under section 6.4 may issue a special class of preferred stock only in an amount, and subject to such terms and conditions, as authorized by the Assistance Board.

(2) DIVIDENDS.—

(A) GENERAL RULE.—Dividends shall not be payable on stock issued under this section.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the stock issued under this section shall provide for the payment of dividends to the Secretary of the Treasury if such stock is purchased by the Secretary under section 6.26(d)(3)(B). Such dividends shall be paid at a rate equal to the current market yield on outstanding, marketable obligations of the United States with maturities of 30 years, and a premium to reflect the cost of capital for institutions in financial distress.

(3) VOTING RIGHTS.—A holder of stock issued under this subsection shall have no voting rights with respect to the stock.

(b) PURCHASE.—The Financial Assistantce Corporation shall purchase shares of stock issued by certified System institutions under subsection (a) to the extent that the issuance of such stock is approved by the Assistance Board.

SEC. 6.28. PAYMENTS.

(a) IN GENERAL.—Beginning in fiscal year 1989, the Secretary of the Treasury shall reimburse the Financial Assistance Corporation for any amounts such Corporation paid in interest charges under section 6.26(c) during fiscal year 1988, and the Secretary shall pay the Financial Assistance Corporation any amounts due from the Secretary to such Corporation under section 6.26(c).

(b) LIMIT ON LIABILITY OF THE SECRETARY OF THE TREASURY.—

(1) INITIAL PAYMENTS.—The first $2,000,000,000 of assistance payments made by the Secretary of the Treasury pursuant to subsection (a) shall not be subject to repayment by institutions of the Farm Credit System.

(2) EXCESS PAYMENTS.—

(A) IN GENERAL.—Any amounts paid into the Assistance Fund by the Secretary of the Treasury pursuant to subsection (a) in excess of $2,000,000,000 shall be repaid by System institutions in accordance with a schedule to be established by the Farm Credit Administration Board.

(B) ALLOCATION.—Each System institution shall pay a proportionate share of the amount due under this paragraph, according to the amount of the performing loan volume of the institution (based on the average loan volume for the preceding year) in relation to the total performing loan volume of the System.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of the Treasury such sums on an annual basis as may be necessary to carry out this subtitle.

SEC 6.29 ONE-TIME STOCK PURCHASE.

(a) IN GENERAL.—For the purpose of obtaining funds for the Trust Fund, each System institution shall purchase from the Financial Assistance Corporation stock issued in accordance with section 6.23 in an amount equal to the amount by which the unallocated retained earnings of the institution (after taking into account any funds received by the institution under section 6.10(c)) exceeds—

(1) in the case of a System bank, 5 percent of assets; or

(2) in the case of a production credit association or a Federal land bank association, 13 percent of assets.

(b) COMPUTATIONS.—The unallocated retained earnings and assets referred to in subsection (a) shall be computed in accordance with generally accepted accounting principles on the basis of the financial statement of the System institution on December 31, 1986.

(c) NOTICE.—Not later than 15 days after the retirement of the obligations of the Capital Corporation under section 6.10, the Financial Assistance Corporation shall notify each System institution of the amount of stock such institution is required to purchase under subsection (a).

(d) INSTITUTION REQURIEMENTS AFTER NOTICE.—Not later than 15 days after the date on which the Financial Assistance Corporation notifies each System institution of the amounts due under subsection (c), each System institution shall make purchases from the Financial Assistance Corporation of the amount of stock required to be purchased by such System institution under this section. No further stock purchases, obligations, or assessments shall be required beyond that provided in section 6.26 and this section.

(e) JURISDICTION OVER ACTIONS.—Notwithstanding any other provision of law, the United States district court for the District of Columbia shall have exclusive jurisdiction over any action brought under or arising out of this section. No suit or proceeding shall be maintained for the recovery of any amount of stock alleged to have been erroneously or illegally purchased, and no suit or proceeding shall be maintained to enjoin or otherwise prevent or impede the giving of notice or the purchase of stock required under this section, unless and until the amount of stock required to be purchased under this section has been purchased and paid for in full.

SEC. 6.30. TERMINATION.

(a) FINANCIAL ASSISTANCE CORPORATION.—The Financial Assistance Corporation and the authority provided to such Corporation by this subtitle shall terminate on the maturity and full payment of all debt obligations issued under section 6.26(a).

(b) ACCOUNTS.—Simultaneously with the termination of the Financial Assistance Corporation as provided in subsection (a), any funds in the accounts established under section 6.25 shall be transferred to the Reserve Account established under section 4.9A.

TITLE VII—MERGERS OF SYSTEM INSTITUTIONS

Subtitle A—Merger of Banks Within a District

SEC. 7.0. POWER TO MERGE.

Two or more banks within a district may merge into a single entity (hereinafter in this title referred to as a "merged bank") if the plan of merger is approved by—

(1) the Farm Credit Administration Board;

(2) the respective boards of directors of the banks involved;

(3) a majority of the stockholders of each bank voting, in person or by proxy, at a duly authorized stockholders' meeting in accordance with the provisions of section 5.2(c) relating to the casting of votes by stockholders; and

(4) in the case of a bank for cooperatives, a majority of the total equity interests in such merging bank for cooperatives (including allocated, but not unallocated, surplus and reserves) held by those stockholders or subscribers to the guaranty fund of the bank voting.

SEC. 7.1. BOARD OF DIRECTORS FOR THE DISTRICT.

(a) COMPOSITION.—

(1) IN GENERAL.—Following a merger pursuant to section 7.0, the district Board of Directors shall continue to be composed of seven members as provided in section 5.1.

(2) REGULATIONS.—The Farm Credit Administration shall issue regulations to ensure the fair and equitable representation of the associations of each of the merging banks on the initial Board of Directors of the merged bank.

(b) ELECTION.—Following a merger pursuant to section 7.0, the members of the district board shall be elected pursuant to regulations issued by the Farm Credit Administration prescribing procedures that are as consistent as practicable with those set forth in section 5.2.

SEC. 7.2. POWERS OF MERGED BANKS.

(a) IN GENERAL.—Except as otherwise provided in this title, a merged bank shall have all of the powers granted to, and shall be subject to all of the obligations imposed on, any of the constituent entities of the merged bank.

(b) REGULATIONS.—The Farm Credit Administration shall issue regualtions that establish the manner in which the powers and obligations of the banks that form the merged bank are consolidated, and to the extent necessary, reconciled in the merged bank.

SEC. 7.3. CAPITAL STOCK.

(a) PLAN OF MERGER.—Subject to subsection (c), the number of shares of capital stock issued by a merged bank to stockholders and other owners of any institution involved in the merger, and the rights and privileges of such shares (including voting power, redemption rights, preferences on liquidation, and the right to dividends) shall be determined by the plan of merger adopted by the banks involved, and shall be consistent with section 4.3A and the regualtions issued by the Farm Credit Administration.

(b) BOARD OF DIRECTORS.—Subject to subsection (a), the number of shares of capital stock issued by a merged bank, and the rights and privileges thereof, shall be determined by the Board of Directors of the merged bank established under this subtitle.

(c) VOTING STOCK.—Voting stock of a merged bank shall be held only—

(1) by associations or cooperatives that were, immediately prior to the merger, entitled to hold voting stock of one of the banks that merged; or

(2) by farmers, ranchers, or producers or harvesters of aquatic products that are or were, immediately prior to the merger, direct borrowers from the merged bank or one of the banks that comprise the merged bank.

SEC. 7.4. EARNINGS, RESERVES, AND DISTRIBUTIONS.

(a) USE OF NET EARNINGS.—The Board of Directors of a merged bank shall determine the use or other application of net earnings after payment of operating expenses.

(b) RESTORATION OF VALUE OF IMPAIRED CAPITAL STOCK.—Net earnings shall first be applied to restore the value of imparied capital stock.

(c) OTHER USES.—After restoration, the application of net earnings may include (but not necessarily in the following order)—

(1) additions to an allocated reserve account;

(2) additions to an unallocated reserve account;

(3) payment of a dividend on capital stock; and

(4) payment of patronage refunds in cash or in stock or other notices of allocation.

(d) USE OF CAPITAL AND RETAINED EARNINGS.—All capital and retained earnings of a merged bank shall be available for use in the activities of the merged bank as the Board of Directors shall determine, without regard to the activities giving rise to such earnings.

SEC. 7.5. REPORTS BY MERGED BANKS FOR COOPERATIVES.

(a) IN GENERAL.—When two or more banks for cooperatives merge, the resulting bank shall, not later than December 31 of each year of the succeeding 5 years following the date of the merger, file an annual report with the Farm Credit Administration that—

(1) analyzes the effect of the merger;

(2) includes a breakdown of loans outstanding according to the size of the cooperative stockholders of the bank; and

(3) describes the adequacy of credit and other assistance services provided to smaller cooperatives.

(b) AVAILABILITY.—A copy of the report requried in subsection (a) shall be made available to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

Subtitle B—Mergers, Transfers of Assets, and Powers of Associations Within a District

CHAPTER 1—TRANSFERS BY PRODUCTION CREDIT ASSOCIATIONS TO BANKS

SEC. 7.6. TRANSFER OF LOAN-RELATED ASSETS AND LENDING AUTHORITY.

(a) ASSIGNMENT AND TRANSFER.—

(1) ASSIGNMENT.—A production credit association may assign the authority conferred on the association to make and participate in loans and related authorities, to the Federal intermediate credit bank in the district, or to a merged bank having the Federal intermediate credit bank as one of its constituents, if the assignment is approved by—

(A) the Farm Credit Administration Board;

(B) the Board of Directors of both institutions; and

(C) a majority of the stockholders of each association voting, in person or by proxy, at a duly authorized stockholders' meeting.

(2) TRANSFER.—The production credit association shall transfer all of the association's loan portfolio or other assets, or both, to the bank for such consideration as may be agreed on by the boards of directors of the association and the bank.

(b) DIRECT LOAN AUTHORITY.—After a transfer described in subsection (a), the Federal intermediate credit bank or the merged bank shall possess the direct loan authority under this Act formerly possessed by the transferring production credit association in the territory served by the association.

(c) ASSOCIATION DIRECT LOANS.—After a transfer described in subsection (a), the provisions of subsections (f), (g), and (h) of section 2.13 and section 4.3A, previously applicable to the association, with respect to the direct loans of the association to borrowers in the territory formerly served by the production credit association, shall be applicable to the bank.

(d) REGULATIONS.—The Farm Credit Administration shall issue regulations that establish the manner in which the powers and obligations of associations that make assignments or transfers are consolidated, and to the extent necessary, reconciled in the bank referred to in subsection (a).

CHAPTER 2—TRANSFERS BY FEDERAL LAND BANKS TO FEDERAL LAND BANK ASSOCIATIONS

SEC. 7.7. TRANSFER OF LENDING AUTHORITY

(a) ASSIGNMENTS.—A Federal land bank or a merged bank having a Federal land bank as one of its constituents, may assign to a Federal land bank association, and the association may assume, the authority of the transferring bank in the territorial area served by the association, to make and participate in long-term real estate mortgage loans under sections 1.6 through 1.9 if the assignment is approved by—

(1) the Farm Credit Administration Board;

(2) the Board of Directors of both institutions; and

(3) a majority of the stockholders of the bank and of the association, in accordance with the voting provisions of sections 7.0 and 7.6.

(b) DIRECT LOANS AND FINANCIAL ASSISTANCE.—After an assignment described in subsection (a)—

(1) the Federal land bank association shall possess all of the direct long-term real estate mortgage loan authority, formerly possessed by the transferring bank, in the territory served by the association; and

(2) the Federal land bank may provide and extend financial assistance to, and discount for, or purchase from, the transferee Federal land bank assocation any note, draft, or other obligation with the endorsement or guarantee of the association, the proceeds of which have been advanced to persons eligible and for purposes of financing by the association under subsection (a).

(c) REGULATIONS.—The Farm Credit Administration shall issue regulations that establish the manner in which the powers and obligations of the banks that make assignments or transfers are consolidated and, to the extent necessary, reconciled in the association referred to in subsection (a). Following a transfer or assignment under subsection (a), the provisions of section 4.3A shall be applicable to the association.

CHAPTER 3—MERGER OF ASSOCIATIONS INTO BANKS

SEC. 7.8. POWER TO MERGE.

(a) IN GENERAL.—On approval of a plan of merger by the Farm Credit Administration Board, and the Boards of Directors of the merging institutions and a majority vote cast by the stockholders of the bank and of the association in accordance with the voting provisions of sections 7.0 and 7.6. as applicable to each, a production credit association or a Federal land bank association may merge into its supervising bank.

(b) REGULATIONS.—The Farm Credit Administration shall issue regulations that establish the manner in which the powers and obligations of the bank and association that form the merged bank are consolidated and, to the extent necessary, reconciled in the merged bank. Following a merger under subsection (a), the provisions of section 4.3A shall be applicable to the merged bank.

CHAPTER 4—MERGER OF LIKE AND UNLIKE ASSOCIATIONS

SEC. 7.9. PREREQUISITE TO MERGERS OF UNLIKE ASSOCIATIONS

There shall be no merger of one or more production credit associations with one or more Federal land bank associations until—

(1) either—

(A) the direct lending authority of each of the merging production credit associations has been vested in the supervising bank of the association under section 7.6; or

(B) the bank supervising the Federal land bank association has transferred all of its direct lending authority of the bank to such associations under section 7.7; and

(2) a plan of merger is developed that shall designate one of the supervising banks of the associations being merged, as the bank responsible for the merged association.

SEC. 7.10. MERGER OF ASSOCIATIONS.

(a) IN GENERAL.—Two or more associations within the same district, whether or not organized under the same title of this Act, may merge into a single entity (hereinafter in this title referred to as a "merged association") if—

(1) the associations desiring to merge comply with section 7.9, as applicable; and

(2) the plan of merger is approved by—

(A) the Farm Credit Administration Board;

(B) the boards of directors of the associations;

(C) a majority of the shareholders of each association voting, in person or by proxy, at a duly authorized stockholders' meeting; and

(D) the supervising bank.

(b) POWERS, OBLIGATIONS, AND CONSOLIDATION.—

(1) POWERS AND OBLIGATIONS.—Except as otherwise provided by this title, a merged association shall—

(A) possess all powers granted under this Act to the associations forming the merged association; and

(B) be subject to all of the obligations imposed under this Act on the associations forming the merged association.

(2) CONSOLIDATION.—The Farm Credit Administration shall issue regulations that establish the manner in which the powers and obligations of the associations that form the merged association are consolidated and, to the extent necessary, reconciled in the merged association. Following a merger under subsection (a), the provisions of section 4.3A shall be applicable to the merged association.

(c) STOCK ISSUANCE.—

(1) PLAN OF MERGER.—Subject to section 4.3A, the number of shares of capital stock issued by a merged association to the stockholders of any association forming such merged association, and the rights and privileges of such shares (including voting power, preferences on liquidation, and the right to dividends), shall be determined by the plan of merger adopted by the merged associations.

(2) PLAN OF CAPITALIZATION.—The number of shares of capital stock, and the rights and privileges thereof, issued by a merged association after a merger shall be determined by the Board of Directors of the merged association, with the approval of the supervising bank, and shall be consistent with section 4.3A a[illegible] the regulations issued by the Farm Credit Administration.

(3) VOTING STOCK.—Voting stock of a merged association shall be issued to and held by farmers, ranchers, or producers or harvesters of aquatic products who are or were, immediately prior to the merger, direct borrowers from one of the associations forming the merged association or the supervising bank of such merged association.

(d) USE OF EARNINGS.—

(1) NET EARNINGS.—In accordance with standards established by the Farm Credit Administration and subject to the approval of the supervising bank, the Board of Directors of a merged association shall determine the use or other application of net earnings after the payment of operating expenses.

(2) RESTORATION OF IMPAIRMENT OF CAPITAL STOCK.—Net earnings shall first be applied to restore the value of any impaired capital stock.

(3) OTHER USES.—After restoration, the application of net earnings may include (but not necessarily in the following order)—

(A) additions to an allocated reserve account;

(B) additions to an unallocated reserve account;

(C) payment of dividends on capital stock; or

(D) payment of patronage refunds in cash or in stock or other notices of allocation.

(4) OTHER CAPITAL AND EARNINGS.—All capital and retained earnings of a merged association shall be available for the uses described in this subsection and for use in the activities of the merged association as the Board of Directors shall determine, without regard to the activities giving rise to such earnings.

SEC. 7.11. RECONSIDERATION.

(a) PERIOD.—A stockholder vote in favor of—

(1) the merger of districts under section 5.17(a)(2);

(2) the merger of banks within a district under section 7.0;

(3) the transfer of the loan related assets and lending authority of a production credit association under section 7.6;

(4) the transfer of the lending authority of a Federal land bank or a merged bank having a Federal land bank as one of its constituents, under section 7.7;

(5) the merger of an association into a bank under section 7.8;

(6) the merger of two or more associations under section 7.10;

(7) the termination of the status of an institution as a System institution under section 7.12; and

(8) the merger of similar banks under section 7.15:

shall not take effect except in accordance with subsection (b).

(b) RECONSIDERATION.—

(1) NOTICE.—Not later than 30 days after a stockholder vote in favor of any of the actions described in subsection (a), the officer or employee that records such vote shall ensure that all stockholders of the voting entity receive notice of the final results of the vote.

(2) EFFECTIVE DATE.—A voluntary merger, transfer, or termination that is approved by a vote of the stockholders of two or more banks or associations, shall not take effect until the expiration of 30 days after the date on which the stockholders of such associations are notified of the final result of the vote in accordance with paragraph (1)—

(3) PETITION FILED.—If a petition for reconsideration of a merger, transfer, or termination vote, signed by at least 15 percent of the stockholders of one or more of the affected banks or associations, is presented to the Farm Credit Administration

within 30 days after the date of the notification required under paragraph (1)—

(A) a voluntary merger, transfer, or termination shall not take effect until the expiration of 60 days after the date on which the stockholders were notified of the final result of the vote; and

(B) a special meeting of the stockholders of the affected banks or associations shall be held during the period referred to in subparagraph (A) to reconsider the vote.

(4) VOTE ON RECONSIDERATION.—If a majority of stockholders of any one of the affected banks or associations voting, in person or by written proxy, at a duly authorized stockholders' meeting, vote against the proposed merger, transfer, or termination, such action shall not take place.

(5) FAILURE TO FILE PETITION.—If a petition for reconsideration of such vote is either not filed prior to the 60th day after the vote or, if timely filed, is not signed by at least 15 percent of the stockholders, the merger, transfer, or termination shall become effective in accordance with the plan of merger, transfer, or termination.

(c) SPECIAL RECONSIDERATION.—

(1) ISSUANCE OF REGULATIONS.—Notwithstanding any other provision of this Act, the Farm Credit Administration shall issue regulations under which the stockholders of any association that voluntarily merged with one or more associations after December 23, 1985, and before the date of enactment of the Farm Credit Admendments Act of 1987, may petition for the opportunity to organize as a separate association.

(2) REQUIREMENTS.—The regulations issued by the Farm Credit Adminisration shall require that—

(A) the petition be filed within 1 year after the date of the implementation of such regulations;

(B) the petition be signed by at least 15 percent of the stockholders of any one of the associations that merged during the period;

(C) the petition describe the territory in which the proposed separate association will operate;

(D) if the petition is approved—

(i) the loans of the members of the new association will be transferred from the current association to such new association:

(ii) the stock, participation certificates and other similar equities of the current association held by members of the new association will be retired at book value and the proceeds of such will be transferred to the new association, and an equivalent amount of stock, participation certificates, and other similar equities will be issued to the members by the new association; and

(iii) the other assets of the current association will be distributed equitably among the current association and any resulting new association.

(3) NOTIFICATION.—Not later than 30 days after the filing of the petition for organization, the current association shall

notify its stockholders that a petition to establish the separate association has been filed. Such notification shall contain the date of a special stockholders' meeting to consider the petition for organization and an enumerated statement of the anticipated benefits and the potential disadvantages to such stockholders if the new association is established. All notifications under this paragraph shall be submitted to the Farm Credit Administration Board for approval prior to being distributed to the stockholders. The Farm Credit Administration Board shall require that, prior to the distribution of the notification to the stockholders, the notification be amended as it determines necessary to provide accurate information to the stockholders that will enable such stockholders to make an informed decision as to the advisability of establishing a new association. The special stockholders' meeting to consider the petition shall be held within 60 days after the filing of the petition. If, at the special stockholders' meeting, a majority of the stockholders of the current association who would be served by the new association approve, by voting in person or by proxy, the establishment of the separate association, the Farm Credit Administration shall, within 30 days of such vote, issue a charter to the new association and amend the charter of the current association to reflect the territory to be served by the new association.

CHAPTER 5—TERMINATION AND DISSOLUTION OF INSTITUTIONS

SEC. 7.12. TERMINATION OF SYSTEM INSTITUTION STATUS.

(a) CONDITIONS.—A System institution may terminate the status of the institution as a System institution if—

(1) the institution provides written notice to the Farm Credit Administration Board not later than 90 days prior to the proposed termination date;

(2) the termination is approved by the Farm Credit Administrative Board;

(3) the appropriate Federal or State authority grants approval to charter the institution as a bank, savings and loan association, or other financial institution;

(4) the institution pays to the Farm Credit Assistance Fund, as created under section 6.25, if the termination is prior to January 1, 1992, or pays to the Reserve Account, if the termination is after such date, the amount by which the total capital of the institution exceeds, in the case of a System bank, Federal land bank association, or production credit association, 6 percent of the assets;

(5) the institution pays or makes adequate provisions for payment of all outstanding debt obligations of the institution;

(6) the termination is approved by a majority of the stockholders of the institution voting, in person or by written proxy, at a duly authorized stockholders' meeting, held prior to giving notice to the Farm Credit Administration Board; and

(7) the institution meets such other conditions as the Farm Credit Administration Board by regulation considers appropriate.

(b) EFFECT.—On termination of its status as a System institution—

(1) the Farm Credit Administration Board shall revoke the charter of the institution; and

(2) the institution shall no longer be an instrumentality of the United States under this Act.

SEC. 7.13. DISSOLUTION OF BANKS BY ASSOCIATION.

(a) DISSOLUTION OF LAND BANKS BY LAND BANK ASSOCIATIONS.—The Federal land bank associations in a district may cause the Federal land bank in the district to be dissolved and liquidated if—

(1) the lending authority of the Federal land bank has been assigned to and assumed by the Federal land bank associations of the bank pursuant to section 7.7;

(2) not later than 90 days prior to the proposed dissolution date, the associations submit to the Farm Credit Administration Board written notoce of the proposed dissolution and a plan of dissolution that provides for—

(A) the distribution of the assets of the bank in accordance with the regulations of the Farm Credit Administration Board; and

(B) the payment, discharge, or adequate provision for all debts, obligations, and liabilities of the bank;

(3) the plan of dissolution is approved by the Farm Credit Administration Board;

(4) the plan of dissolution is approved by a majority vote of the stockholders of the bank present and voting, or voting by written proxy, at a duly authorized stockholders' meeting, and

(5) the associations comply with such other requirements as are provided in regulations of the Farm Credit Administration Board.

(b) DISSOLUTION OF INTERMEDIATE CREDIT BANKS BY PRODUCTION CREDIT ASSOCIATIONS.—The production credit associations in a district may cause the Federal intermediate credit bank in the district to be dissolved and liquidated if—

(1) not later than 90 days prior to the proposed dissolution date, the associations submit to the Farm Credit Administration Board written notice of the proposed dissolution and a plan of dissolution that provides for—

(A) the distribution of the asets of the bank in accordance with the regulations of the Farm Credit Administration Board; and

(B) the payment, discharge, or adequate provisions for all debts, obligations, and liabilities of the bank;

(2) consent to the dissolution and approval of the plan of dissolution are granted by the Farm Credit Administration Board;

(3) the plan of dissolution is approved by a majority vote of the stockholders of the bank voting in person or by proxy at a duly authorized stockholders' meeting in accordance with the provisions of section 5.2(c) relating to the casting of votes by stockholders; and

(4) the associations comply with such other requirements as are provided in regulations of the Farm Credit Administration Board.

(c) DEFINITIONS.—For purposes of this section, the term 'dissolution' shall incude liquidation.

Subtitle C—Approval of Disclosure Information and Issuance of Charters by the Farm Credit Administration Board

SEC 7.14. APPROVAL OF DISCLOSURE INFORMATION AND ISSUANCE OF CHARTERS.

(a) DISCLOSURE OF INFORMATION.—

(1) APPROVAL OF PLAN.—With respect to any plan of merger, transfer or assignment of lending authority, dissolution, or termination, after approval by the Board of directors of the affected institutions and prior to submission to the voters (voting stockholders and, where required, contributors to guaranty funds) of such institutions, such plan shall be submitted to the Farm Credit Administration Board, together with all information that is to be distributed to the voters with repsect to the contemplated action, including an enumerated statement of the anticipated benefits and potential disadvantages of such action.

(2) NOTICE OF APPROVAL.—On notification that the Farm Credit Administration Board has approved such plan for submission to the stockholders, or after 60 days of no action on the plan by the Board, the submitting institutions may submit the plan, together with the disclosure information, to the voters for the prescribed vote.

(b) NOTICE OF REASONS FOR DISAPPROVAL.—If the Farm Credit Administration Board disapproves the plan for submission to the stockholders, notification to the submitting institutions shall specify the reasons for the determination by the Board. If such plan is determined to be inadequate, it shall not be submittted to the voters for a vote.

(c) FEDERAL CHARTER.—Each plan of merger or transfer of lending authority may include a proposed new or revised Federal charter for the merged or transferee entity. The Farm Credit Administration Board shall issue such charter on the approval of the plan, as prescribed in this title, unless the Board determines that the charter submitted is not consistent with the Act.

Subtitle D—Mergers of Like Entities

SEC. 7.15. MERGER OF SIMILAR BANKS.

(a) IN GENERAL.—Banks organized or operating under title I, II, or III, respectively, may merge with banks in other districts operating under the same title if the plan or merger is approved by—

(1) the Farm Credit Administration Board;

(2) the respective Boards of Directors of the banks involved;

(3) a majority vote of the stockholders of each bank voting, in person or by proxy, at a duly authorized stockholders' meeting in accordance with the provisions of section 5.2(c) relating to the casting of votes by stockholders; and

(4) in the case of a bank for cooperatives, a majority of the total equity interests in such merging bank for cooperatives (in-

cluding allocated, but not unallocated, surplus and reserves) held by those stockholders or subscribes to the guaranty fund of the bank voting.

(b) PROCEDURES.—The provisions of section 7.2 through 7.5 shall apply to banks merged under this section.

(c) BOARD OF DIRECTORS.—

(1) IN GENERAL.—After a merger under subsection (a), a board of directors shall be created for the resulting bank.

(2) COMPOSITION.—The board shall be composed of—

(A) two directors elected by each of the district boards, with at least one such director from each district being elected by the eligible stockholders of, or subscribers to, the guaranty fund of the merging banks; and

(B) one outside director elected by the members elected under subparagraph (A).

(3) OUTSIDE DIRECTOR.—

(A) QUALIFICATIONS.—The outside director elected under paragraph (2)(B) shall be experienced in financial services and credit, and within the 2-year period prior to such election, shall not have been a borrower from, shareholder in, or director, officer, employee, or agent of any institution of the Farm Credit System.

(B) FAILURE TO ELECT.—If the other members of the board fail to elect an outside director, the Farm Credit Administration Board shall appoint a qualified person to serve on the board of directors until such member is so elected.

(4) BYLAWS.—Notwithstanding paragraph (2), the bylaws of the merged bank may, with the approval of the Farm Credit Administration, provide for a different number of directors to be selected in a different manner, except that the bylaws shall provide for at least one outside director.

(5) POWERS AND DUTIES.—The board created under paragraph (1) shall have such separate and distinct powers, functions, and duties as are normally exercised by a district board in related to the operations and policies of the banks which merged.

SEC. 7.16. MERGER OF SIMILAR ASSOCIATIONS.

(a) IN GENERAL.—Associations organized and operating under titles I and II may voluntarily merge with other like associations if the plan of merger is approved by—

(1) the Farm Credit Administration Board;

(2) the respective Boards of Directors of the associations involved;

(3) a majority vote of the stockholders of each association voting, in person or by proxy, at a duly authorized stockholders' meeting; and

(4) the supervising bank,

(b) PROCEDURES.—The provisions of subsection (b), (c), and (d) of section 7.10 shall apply to associations merged under this section.

TITLE VIII—AGRICULTURAL MORTGAGE SECONDARY MARKET

SEC. 8.0. DEFINITIONS.

Unless the context otherwise requires, as used in this title:

(1) AGRICULTURAL PROPERTY.—The term "agricultural property" means an agricultural commodity or product, or personal property used in the production, storage, processing, marketing, or distribution of an agricultural commodity or product.

(2) AGRICULTURAL REAL ESTATE.—The term "agricultural real estate" means—

(A) a parcel or parcels of land, or a building or structure affixed to the parcel or parcels, that—

(i) is used for the production, storage, processing, marketing, or distribution of one or more agricultural commodities or products;

(ii) consists of a minimum acreage or is used in producing minimum annual receipts, as determined by the Mortgage Corporation; or

(B) a principal residence that is a single family, moderate-priced residential dwelling located in a rural area, excluding any community having a population in excess of 2,500 inhabitants.

(3) BOARD.—The term "Board" means the Board of Directors of the Mortgage Corporation established under section 8.2(a).

(4) CERTIFIED FACILITY.—The term "certified facility" means a secondary marketing agricultural loan facility that is certified under section 8.5.

(5) CREDIT ENHANCEMENT.—The term "credit enhancement" means the guaranty of timely payment of the principal and interest on securities representing interests in, or obligations backed by, pools of qualified agricultural mortgage loans, in accordance with this Act.

(6) MORTAGE CORPORATION.—The term "Mortgage Corporation" means the Federal Agricultural Mortgage Corporation established under section 8.1.

(7) ORIGINATOR.—The term "originator" means any Farm Credit System institution, bank, insurance company, business and industrial development company, savings and loan association, association of agricultural producers, agricultural cooperative, commercial finance company, trust company, credit union, or other entity that originates and services agricultural mortgage loans.

(8) QUALIFIED LOAN.—The term "qualified loan" means an obligation that—

(A) is—

(i) secured by a fee-simple or leasehold mortgage with status as a first lien on agricultural real estate located in the United States;

(ii) secured by a first lien on agricultural property located in the United States; or

(iii) a loan made by a bank for cooperatives of the System pursuant to section 3.7(a); and

(B) is an obligation of—

(i) a person, corporation, or partnership that has training or farming experience that, under criteria established by the Mortgage Corporation, is sufficient to assure a reasonable likelihood that the loan will be repaid according to its terms; or

(ii) a cooperative meeting the eligibility standards prescribed in section 3.7(a).

SEC. 8.1. FEDERAL AGRICULTURAL MORTGAGE CORPORATION.

(a) ESTABLISHMENT.—

(1) CHARTER.—There is created the Federal Agricultural Mortgage Corporation. The Mortgage Corporation shall be a body corporate under the direction of a Board of Directors. The Mortgage Corporation shall be a Federally chartered instrumentality of the United States that is subject to this Act. The Mortgage Corporation shall be deemed to be an institution of the Farm Credit System.

(2) LIABILITY.—

(A) MORTGAGE CORPORATION.—The Mortgage Corporation shall not be liable for any of the debts or obligations of any other institution of the Farm Credit System.

(B) SYSTEM INSTITUTIONS.—The Farm Credit System and System institutions (other than the Mortgage Corporation) shall not be liable for any debts or obligations of the Mortgage Corporation.

(b) DUTIES.—The Mortgage Corporation shall—

(1) in consultation with originators, develop uniform underwriting, security appraisal, and repayment standards for qualified loans;

(2) determine the eligibility of agricultural mortgage marketing facilities to contract with the Mortgage Corporation for credit enhancement of specific mortgage pools; and

(3) provide credit enhancement for the repayment of principal and interest due on pools of qualified loans.

(c) TREASURY LOAN TO MORTGAGE CORPORATION.—

(1) IN GENERAL.—The Secretary of the Treasury is authorized to loan to the Mortgage Corporation, on such terms and conditions as may be prescribed by an agreement between the Mortgage Corporation and the Secretary of the Treasury, funds that, in the judgment of the Board of the Mortgage Corporation, are from time to time necessary to carry out this title, but in no event shall such loans exceed in the aggregate $1,500,000,000 at any one time.

(2) AUTHORIZATION.—The authority provided to the Secretary of the Treasury under paragraphs (1) and (5) shall be effective for any fiscal year only to such extent and in such amounts as are provided in advance in appropriation Acts.

(3) USE OF LOANS.—A loan made under this subsection shall be used by the Mortgage Corporation solely in carrying out functions of the Mortgage Corporation as prescribed in this title.

(4) INTEREST.—

(A) IN GENERAL.—Notwithstanding any other provision of law, interest shall accrue to the Department of the Treasury

on the amount of any outstanding loans made to the Mortgage Corporation pursuant to this subsection on the basis of the average daily amount of the outstanding loans to be determined at the close of each fiscal year.

(B) PAYMENT.—The Mortgage Corporation shall pay the interest accrued under subparagraph (A) to the Secretary of the Treasury annually as miscellaneous receipts.

(C) RATE.—The rate of interest to be charged in connection with any loan made pursuant to this subsection shall be determined by the Secretary of the Treasury but shall not be less than the current average rate on outstanding marketable and nonmarketable obligations of the United States as of the last day of the month preceding the making of such loan.

(5) REPAYMENT OF PRINCIPAL AND INTEREST.—As long as any loans made under this subsection are outstanding, the Mortgage Corporation shall devote the net earnings of the Corporation to the repayment of the principal and accrued interest on such loans.

(6) PUBLIC-DEBT TRANSACTION.—For the purpose of making loans under this subsection, the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, after the date of enactment of the Farm Credit Act Amendments of 1987. The purposes for which securities may be issued under chapter 31 of title 31 are extended to include such loans. All loans and repayments under this subsection shall be treated as public-debt transactions of the United States.

(7) INFORMATION.—If any loans to the Mortgage Corporation are outstanding, the Secretary of the Treasury shall provide to the Mortgage Corporation, at least once each fiscal year, information that shall be necessary for the Mortgage Corporation to determine whether the balance of the loan is in excess of the amount that is needed to meet the requirements of the Mortgage Corporation. The Mortgage Corporation shall pay the excess to the Secretary of the Treasury to be credited against the loans to the fund.

SEC. 8.2. BOARD OF DIRECTORS.

(a) INTERIM BOARD.—

(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Farm Credit Act Amendments of 1987, an interim Board of Directors shall be appointed by the President, one of whom shall be designated by the President as interim Chairman.

(2) COMPOSITION.—The interim Board shall consist of 15 members, of which—

(A) five members shall be representatives of banks, other financial institutions, and insurance companies;

(B) five members shall be representatives of System institutions; and

(C) five members shall be farmers or ranchers experienced in financial matters, who are not presently, and who have not been, officers or directors of any financial institutions,

of which not more than three of the appointed members shall be members of the same political party, and not more than two of which shall be stockholders of any System institution.

(3) VOTING COMMON STOCK.—

(A) INITIAL OFFERING.—The interim Board shall arrange for an initial offering of voting common stock and shall take whatever other actions are necessary to proceed with the operations of the Mortgage Corporation.

(B) PURCHASERS.—Subject to subparagraph (C), the voting common stock shall be offered to banks, other financial entities, insurance companies, and System institutions under such terms and conditions as the interim Board may adopt.

(C) DISTRIBUTION.—The voting stock shall be fairly and broadly offered to assure that no institution or institutions acquire a disproportionate amount of the total amount of voting common stock outstanding of a class and that capital contributions and issuances of voting common stock for the contributions are fairly distributed between entities eligible to hold class A and class B stock.

(b) PERMANENT BOARD.—

(1) ESTABLISHMENT.—Immediately after the date that banks, other financial institutions, insurance companies, and System institutions have subscribed and fully paid for at least $20,000,000 of common stock of the Mortgage Corporation, the Mortgage Corporation shall arrange for the election and appointment of a Board of Directors.

(2) COMPOSITION.—The Board shall consist of 15 members, of which—

(A) five members shall be elected by holders of common stock that are insurance companies, banks, or other financial entities;

(B) five members shall be elected by holders of common stock that are System institutions; and

(C) five members shall be appointed by the President, who are experienced in financial matters and who are not, and have not been, officers or directors of any financial institutions, and are representatives of the general public, of which not more than three of the appointed members shall be members of the same political party, and at least two of which shall be experienced in farming or ranching.

(3) PRESIDENTIAL APPOINTEES.—The President shall appoint the members of the Board referred to in paragraph (2)(C) not later than the later of—

(A) the date referred to in paragraph (1); or

(B) the date that is 270 days after the date of enactment of the Farm Credit Act Amendments of 1987.

(c) TERM OF DIRECTORS.—

(1) ELECTED MEMBERS.—The members elected under subparagraphs (A) and (B) of subsection (b)(2) shall each be elected annually for a term ending on the date of the next annual meeting of the common stockholders of the Mortgage Corporation and shall serve until their successors are elected and qualified. Any seat on the Board that becomes vacant after the annual

election of the directors shall be filled by the members of the Board from the same category of directors, but only for the unexpired portion of the term.

(2) APPOINTED MEMBERS.—The term of office of members appointed under subparagraph (C) of subsection (b)(2) shall be 3 years and until their successors have been appointed and qualified, except that with regard to the initial appointments of such members the terms of two of the members shall expire 2 years after the date of appointment and the term of one of the members shall expire 1 year after the date of appointment.

(d) CHAIRMAN.—The Board of Directors shall elect, on an annual basis, a Chairman from among the members of the Board.

SEC. 8.3. POWERS AND DUTIES OF THE MORTGAGE CORPORATION AND BOARD.

(a) CREDIT ENHANCEMENT.—After the Board has been duly constituted, subject to the other provisions of this title and other commitments and requirements established pursuant to law, the Mortgage Corporation may provide credit enhancement on terms and conditions determined by the Mortgage Corporation to securities issued on the security of, or in participation in, pooled interests in qualified loans.

(b) DUTIES OF THE BOARD.—

(1) IN GENERAL.—The Board shall—

(A) determine the general policies that shall govern the operations of the Mortgage Corporation;

(B) select, appoint, and determine the compensation of qualified persons to fill such offices as may be provided for in the bylaws of the Mortgage Corporation; and

(C) assign to such persons such executive functions, powers, and duties as may be prescribed by the bylaws of the Mortgage Corporation or by the Board.

(2) EXECUTIVE OFFICERS AND FUNCTIONS.—The persons elected or appointed under paragraph (1)(B) shall be the executive officers of the Mortgage Corporation and shall discharge the executive functions, powers, and duties of the Mortgage Corporation.

(c) POWERS OF THE MORTGAGE CORPORATION.—The Mortgage Corporation shall be a body corporate and shall have the power to—

(1) operate under the direction of its Board;

(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

(3) provide for a president, one or more vice presidents, secretary, treasurer, and such other officers, employees, and agents, as may be necessary, define their duties and compensation levels, all without regard to title 5, United States Code, and require surety bonds or make other provisions against losses occasioned by acts of the persons;

(4) prescribe bylaws, through the Board of Directors, not inconsistent with law, that shall provide for—

(A) the classes of the stock of the Mortgage Corporation; and

(B) the manner in which—

(i) the stock shall be issued, transferred, and retired;

(ii) the officers, employees, and agents of the Mortgage Corporation are selected;

(iii) the property of the Mortgage Corporation is acquired, held, and transferred;

(iv) the commitments and other financial assistance of the Mortgage Corporation are made;

(v) the general business of the Mortgage Corporation is conducted; and

(vi) the privileges granted by law to the Mortgage Corporation are exercised and enjoyed;

(5) prescribe such standards as may be necessary to carry out this title;

(6) enter into contracts and make payments with respect to the contracts;

(7) make and perform contracts, agreements and commitments with persons and entities both inside and outside of the Farm Credit System;

(8) sue and be sued in its corporate name and complain and defend in a court of competent jurisdiction;

(9) acquire, hold, lease, mortgage or dispose of, at public or private sale, real and personal property, provide credit enhancement, sell or exchange any securities or obligations, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to the business of the Mortgage Corporation; and

(10) exercise such other incidental powers as are necessary to carry out the powers, duties, and functions of the Mortgage Corporation in accordance with this title.

(d) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of the Farm Credit Act Amendments of 1987, the Comptroller General of the United States shall conduct a study, and submit to appropriate committees of Congress a report, on the implementation of this title by the Mortgage Corporation and the effect of the operations of the Mortgage Corporation on producers, the Farm Credit System and other lenders, and the capital markets.

SEC. 8.4. COMMON STOCK.

(a) CLASSES OF STOCK.—The Mortgage Corporation shall issue common stock having such par value as may be fixed by the Board from time to time. The stock may be issued only to originators and certified facilities. Each share of common stock shall be entitled to one vote with rights of cumulative voting at all elections of directors. Voting shall be by classes as described in section 8.2(a). The stock shall be divided into two classes with the same par value per share. Class A stock may be held only by entities that are not System institutions that are entitled to vote for directors specified in section 8.2(b)(2)(A). Class B stock may be held only by System institutions that are entitled to vote for directors specified in section 8.2(b)(2)(B).

(b) MAXIMUM NUMBER OF SHARES.—The maximum numbers of shares of common stock that the Mortgage Corporation may issue and have outstanding at any one time shall be fixed by the Board from time to time. A common share issued shall be fully transferable except as provided in this section, and except (1) in the case of

the Mortgage Corporation, a share shall be transferable only on the books of the Mortgage Corporation, and (2) as the Mortgage Corporation may restrict in the bylaws of the Mortgage Corporation. No stockholder, other than a holder of class B stock, may own, directly or indirectly, more than 10 percent of the outstanding shares of that class of the common stock of the Mortgage Corporation.

(c) CAPITAL CONTRIBUTIONS.—The Mortgage Corporation may require each originator and each certified facility to make, or commit to make, nonrefundable capital contributions to the Mortgage Corporation if the capital contributions are reasonable and necessary to carry out this title. The Mortgage Corporation, from time to time, shall issue to each originator or certified facility voting common stock evidencing any capital contributions made pursuant to this subsection.

(d) DIVIDENDS ON COMMON STOCK.—Such dividends as may be declared by the Board, in the discretion of the Board, shall be paid by the Mortgage Corporation to the holders of the common stock of the Mortgage Corporation pro rata based on the total number of shares of both classes of stock outstanding.

SEC. 8.5. CERTIFICATION OF FACILITIES.

(a) STANDARDS.—

(1) ISSUANCE.—Not later than 120 days after the appointment and election of the Board, the Mortgage Corporation shall issue standards for certification of agricultural mortgage marketing facilities, including eligibility standards established in accordance with paragraph (2).

(2) ELIGIBILITY.—To be eligible to be certified under the standards referred to in paragraph (1), an agricultural mortgage marketing facility shall—

(A) be an institution of the Farm Credit System or a corporation, association, or trust organized under the laws of any State or the District of Columbia;

(B) have adequate capitalization;

(C) have as one of its purposes the sale or resale of securities representing interests in, or obligations backed by, pools of qualified loans that are provided credit enhancement by the Mortgage Corporation;

(D) demonstrate acceptable managerial ability with respect to agricultural mortgage loan underwriting, servicing, and marketing;

(E) adopt appropriate agricultural mortgage loan underwriting, appraisal, and servicing standards and procedures, in conformity with uniform standards established by the Mortgage Corporation;

(F) permit the Mortgage Corporation to examine the books, records, and loan files of the facility with respect to the operations of the facility and enhancement of pools of the facility; and

(G) adopt appropriate minimum standards and procedures relating to loan administration and disclosure to borrowers concerning the terms and rights applicable to loans for which credit enhancement is provided, in conformity

with uniform standards established by the Mortgage Corporation.

(3) NONDISCRIMINATION.—The standards referred to in paragraph (1) shall not discriminate between or against Farm Credit System and non-Farm Credit System applicants.

(b) CERTIFICATION.—Within 60 days after receiving an application for certification under this section, the Mortgage Corporation shall certify the facility if the application of the facility meets the standards referred to in subsection (a).

(c) TERM.—Any certification by the Mortgage Corporation of an agricultural mortgage marketing facility shall be effective for a period determined by the Mortgage Corporation of not to exceed 5 years.

(d) REVOCATION.—

(1) IN GENERAL.— After notice and an opportunity for a hearing, the Mortgage Corporation may revoke the certification of an agricultural mortgage marketing facility if the Mortgage Corporation determines that the facility no longer meets the standards referred to in subsection (a).

(2) EFFECT OF REVOCATION.—Revocation of a certification shall not affect any pool credit enhancement that has been issued by the Mortgage Corporation.

SEC. 8.6. CREDIT ENHANCEMENT OF QUALIFIED LOANS.

(a) CREDIT ENHANCEMENT.—The Mortgage Corporation is authorized, on such terms and conditions as are established by the Mortgage Corporation, to provide credit enhancement for the timely payment of principal and interest on securities representing interests in, or obligations backed by, pools of qualified loans.

(b) LIMITATIONS.—In the case of any pool referred to in subsection (a), the Mortgage Corporation shall—

(1) provide credit enhancement only with respect to an individual pool of qualified loans on application of a certified facility;

(2) provide credit enhancement only if a reserve in an amount equal to at least 10 percent of the principal amount of the loans constituting the pool has been established in accordance with this title;

(3) in any case in which an originator has agreed to contribute to a reserve as provided in section 8.7, require the certified facility to establish a reserve in United States Treasury securities or other securities issued, guaranteed, or insured by an agency of the Federal Government in an amount equal to at least 10 percent of the principal amount of the loans constituting the pool;

(4) in any case in which an originator has not agreed to contribute to a reserve as provided in section 8.7, require the certified facility to establish a reserve in an amount equal to at least 10 percent of the principal amount of the loans constituting the pool in such manner as the Mortgage Corporation considers appropriate;

(5) require that the certified facility cause the reserves required under paragraphs (2), (3), and (4), exclusive of the earnings on the reserve, to be held for the benefit of the holders of

securities representing an interest in, or obligation backed by, the pool to assure the timely receipt of principal and interest due to the security holders;

(6) in any case in which a certified facility or originator has not established a reserve, require the certified facility or originator to retain a subordinated participation interest equal to 10 percent of the principal amount of the loans constituting the pool, as provided in section 8.7;

(7) require that such reserves and retained subordinated participating interests must be first exhausted before any demand be made by the certified facility with respect to the credit enhancement of the Mortgage Corporation;

(8) assure the timely receipt of principal and interest due to security or obligation holders only after exhaustion of such reserves and retained subordinated participating interests;

(9) require that a certified facility act in accordance with the standards of a prudent institutional lender to resolve loan defaults;

(10) provide that, to the extent that the certified facility receives proceeds of collateral, judgments, settlements, or guarantees with respect to a loan in the pool, the proceeds shall be first applied, after payment of costs of collection, by the Mortgage Corporation to repay any loans made under section 8.1(c) with respect to the pool, and second, to reimburse the Mortgage Corporation for the amount of credit enhancement payments made with respect to the pool by the Mortgage Corporation;

(11) permit reserves to be reduced at certain times to provide for the distribution of earnings to originators required by section 8.7, subject to the limitation provided in such section;

(12) not provide credit enhancement with respect to a pool if the pool contains any single loan the principal amount of which exceeds 5 percent of the total principal amount of the pool at the time the application for credit enhancement is submitted;

(13) in the case of each loan originated for a pool, provide credit enhancement only if the originator may retain the servicing of the mortgage in connection with the borrower; and

(14) provide credit enhancement only if each qualified loan has been sold to the certified facility without recourse to the originator.

(c) AGGREGATE PRINCIPAL AMOUNTS OF QUALIFIED LOANS.—

(1) INITIAL YEAR.—During the first year after the date of enactment of the Farm Credit Amendments Act of 1987, the Mortgage Corporation may provide credit enhancement for securities representing interests in, or obligations backed by, qualified loans with an aggregate principal amount not in excess of 2 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year (as published by the Board of Governors of the Federal Reserve System), less all Farmers Home Administration agricultural real estate debt.

(2) SECOND YEAR.—During the year following the year referred to in paragraph (1), the Mortgage Corporation may provide credit enhancement for securities representing interests in, or obligations backed by, qualified loans with an additional

principal amount not in excess of 4 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year, less all Farmers Home Administration agricultural real estate debt.

(3) THIRD YEAR.—During the year following the year referred to in paragraph (2), the Mortgage Corporation may provide credit enhancement for securities representing interests in, or obligations backed by, qualified loans with an additional principal amount not in excess of 8 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year, less all Farmers Home Administration agricultural real estate debt.

(4) SUBSEQUENT YEARS.—In years subsequent to the year referred to in paragraph (3), the Mortgage Corporation may provide credit enhancement without regard to the principal amount of the qualified loans so enhanced.

SEC. 8.7. RESERVES AND SUBORDINATED PARTICIPATION INTERESTS OF CERTIFIED FACILITIES.

(a) CONTRIBUTIONS.—For each pool of loans, a certified facility and the participating originators may each contribute a share of the 10 percent minimum reserve required under section 8.6(b)(2).

(b) DISTRIBUTION.—In the case of each applicable loan pool, a certified facility shall—

(1) distribute to originators, at least semiannually, any earnings on the contributions of the originators to the reserve, except that the distributions shall not cause the reserve to fall below 10 percent of the outstanding aggregate principal and accrued interest of the loans then remaining in the pool; and

(2) maintain separate loan loss accounting for each loan in the pool in those pools in the case of each pool in which the originator has contributed to the reserve.

(c) LOSSES.—Except for that portion of losses absorbed by a contribution of a certified facility to the reserve as provided in subsection (a), each originator participating in the pool shall absorb any losses on loans originated up to the total amount the originator has contributed to the reserve before the losses are absorbed by the contributions of other originators who are participating in the pool.

(d) SUBORDINATED PARTICIPATION INTERESTS.—The rights of the holders of the subordinated participation interests to receive distributions with respect to the loans constituting the pool shall be subordinated as prescribed by the Mortgage Corporation to enhance the likelihood of regular receipt by the other holders of interests in such pool of the full amount of scheduled payments of principal and interest on loans constituting the pool.

(e) COMPOSITION OF RESERVES.—The reserves required under this section, other than retained subordinated participation interests, shall be held in the form of United States Treasury securities or other securities issued, guaranteed, or insured by an agency of the United States government.

SEC. 8.8. STANDARDS FOR QUALIFIED LOANS.

(a) STANDARDS.—Not later than 120 days after the appointment and election of the Board, the Mortgage Corporation, in consulta-

tion with originators, shall establish uniform underwriting, security appraisal, and repayment standards for qualified loans.

(b) SMALL LOANS OR ORIGINATORS.—The standards referred to in subsection (a) shall not discriminate against small originators or small agricultural mortgage loans that are at least $50,000.

SEC. 8.9. EXEMPTION FROM RESTRUCTURING AND BORROWERS' RIGHTS PROVISIONS FOR POOLED LOANS.

Notwithstanding any other provision of law, sections 4.13(b), 4.14, 4.14A, 4.37, and 6.7 shall not apply to any loan included in a pool of qualified loans backing securities or obligations for which the Mortgage Corporation provides credit enhancement. The loan servicing standards established by the Mortgage Corporation shall be patterned after similar standards adopted by other Federally sponsored secondary market facilities.

SEC. 8.10. FUNDING FOR CREDIT ENHANCEMENT; RESERVES OF MORTGAGE CORPORATION.

(a) CREDIT ENHANCEMENT.—The Mortgage Corporation shall provide credit enhancement for securities representing interests in, or obligations backed by, by pools of qualified loans through commitments issued by the Mortgage Corporation providing for credit enhancement.

(b) CREDIT ENHANCEMENT FEES.—

(1) INITIAL FEE.—At the time a credit enhancement is issued by the Mortgage Corporation, the Mortgage Corporation shall assess the certified facility a fee of not more than ½ of 1 percent of the initial principal amount of each pool of qualified loans.

(2) ANNUAL FEES.—Beginning in the second year after the date the credit enhancement is issued under paragraph (1), the Mortgage Corporation may assess the certified facility an annual fee, at the end of each year, to be established by the Board of Directors of the Mortgage Corporation of not more than ¼ of 1 percent of the principal amount of the loans then constituting the pool.

(3) DETERMINATION OF AMOUNT.—The Mortgage Corporation shall establish such fees based on the risks associated with such pool and shall take into account the reserves maintained by qualified facilities and originators pursuant to section 8.7 and the level of capital and reserves of the Mortgage Corporation.

(c) MORTGAGE CORPORATION FEES.—The Mortgage Corporation may impose charges or fees in reasonable amounts in connection with the administration of the activities of the Mortgage Corporation under this title to recover the costs of the Mortgage Corporation for performing the administration.

(d) RESERVES.—As much of the fees collected under this section as are necessary shall be set aside by the Mortgage Corporation to establish an adequately funded reserve against losses arising out of its credit enhancement activities. Such reserve shall be used to fulfill the credit enhancement assurances of the Mortgage Corporation before the Mortgage Corporation borrows from the Secretary of the Treasury under section 8.1(c).

SEC. 8.11. SUPERVISION, EXAMINATION, AND REPORT OF CONDITION.

(a) REGULATION.—

(1) AUTHORITY.—Notwithstanding any other provision of this Act, the regulatory authority of the Farm Credit Administration with respect to the Mortgage Corporation shall be confined to—

(A) providing for the examination of the condition of the Mortgage Corporation; and

(B) providing for the general supervision of the safe and sound performance of the powers, functions, and duties vested in the Mortgage Corporation by this title.

(2) CONSIDERATIONS.—In exercising its authority pursuant to this section, the Farm Credit Administration shall consider—

(A) the purposes for which the Mortgage Corporation was created;

(B) the practices appropriate to the conduct of secondary markets in agricultural loans; and

(C) the reduced levels of risk associated with appropriately structured secondary market transactions.

(b) EXAMINATIONS AND AUDITS.—

(1) IN GENERAL.—The financial transactions of the Mortgage Corporation shall be examined by examiners of the Farm Credit Administration in accordance with the principles and procedures applicable to commercial corporate transactions under such rules and regulations as may be prescribed by the Farm Credit Administration.

(2) FREQUENCY.—The examinations shall occur at such times as the Farm Credit Administration Board may determine, but in no event less than once each year.

(3) ACCESS.—The examiners shall—

(A) have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Mortgage Corporation and necessary to facilitate the audit; and

(B) be afforded full access for verifying transactions with certified facilities and other entities with whom the Mortgage Corporation conducts transactions.

(c) ANNUAL REPORT OF CONDITION.—The Mortgage Corporation shall make and publish an annual report of condition as prescribed by the Farm Credit Administration. Each report shall contain financial statements prepared in accordance with generally accepted accounting principles and contain such additional information as the Farm Credit Administration may by regulation prescribe. The financial statements of the Mortgage Corporation shall be audited by an independent public accountant.

SEC. 8.12. SECURITIES IN CREDIT ENHANCED POOLS.

(a) FEDERAL LAWS.—

(1) EXEMPTION FROM FEDERAL SECURITIES LAWS.—Notwithstanding any other provision of law, securities representing an interest in, or obligations backed by, pools of qualified loans for which credit enhancement has been provided by the Mortgage Corporation shall be exempt from the laws administered by the Securities and Exchange Commission to the same extent as securities that are direct obligations of, or obligations guaranteed as to principal or interest by, the United States.

(2) NONFEDERAL OBLIGATIONS.—The securities and obligations shall clearly indicate that such securities and obligations, together with interest thereon, are not guaranteed by the United States or constitute a debt or obligation of the United States or of any agency or instrumentality of the United States.

(3) FEDERAL JURISDICTION.—Notwithstanding section 1349 of title 28, United States Code, or any other provision of law:

(A) AGENCY STATUS.—The Mortgage Corporation shall be considered an agency under sections 1345 and 1442 of such title.

(B) CIVIL ACTIONS.—All civil actions to which the Mortgage Corporation is a party shall be deemed to arise under the laws of the United States and, to the extent applicable, shall be deemed to be governed by Federal common law. The district courts of the United States shall have original jurisdiction of all such actions, without regard to amount of value.

(C) REMOVAL.—Any civil or other action, case, or controversy in a court of a State or any court, other than a district court of the United States, to which the Mortgage Corporation is a party may at any time before trial be removed by the Mortgage Corporation, without the giving of any bond or security—

(i) to the District Court of the United States for the district and division embracing the place where the same is pending; or

(ii) if there is no such district court, to the District Court of the United States for the district in which the principal office of the Mortgage Corporation is located;

by following any procedure for removal for causes in effect at the time of such removal.

(D) ATTACHMENT OR EXECUTION.—No attachment or execution shall be issued against the Mortgage Corporation or any of the property of the Mortgage Corporation before final judgment in any Federal, State, or other court.

(4) SECURITIES.—Nothing in this title is intended to expand the authority of a national bank, State bank, or bank holding company, or an affiliate, to deal in or underwrite securities.

(b) STATE SECURITIES LAWS.—Any security or obligation that has been provided credit enhancement by the Mortgage Corporation shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by, or guaranteed as to principal and interest by, the United States or any agency or instrumentality of the United States.

(c) AUTHORIZED INVESTMENTS.—

(1) SECURITIES REQUIREMENTS.—

(A) IN GENERAL.—Securities representing an interest in, or obligations backed by, pools of qualified loans with respect to which the Mortgage Corporation has provided credit enhancement shall be authorized investments of any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State to the

same extent that the person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold, or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality of the United States. Such securities or obligations may be accepted as security for all fiduciary, trust, and public funds, the investment or deposits of which shall be under the authority and control of the United States or any State or any officers of either, and shall be eligible for unlimited purchase, sale, and underwriting by national banks.

(B) STATE LIMITATIONS ON PURCHASE, HOLDING, OR INVESTMENT.—If State law limits the purchase, holding, or investment in obligations issued by the United States by the person, trust, corporation, partnership, association, business trust, corporation, partnership, association, business trust, or business entity, securities or obligations of a certified facility issued on which the Mortgage Corporation has provided credit enhancement shall be considered to be obligations issued by the United States for purposes of the limitation.

(2) STATE LIMITATIONS ON CHARGES.—To facilitate the orderly and necessary flow of long-term loans and funds from agricultural lenders and certified facilities for agricultural loans, the provisions of law of any State expressly limiting the rate or amount of interest, discount points, finance charges, or other charges that may be charged, taken, received, or reserved by agricultural lenders or certified facilities shall not apply to any qualified loan made by an originator or a certified facility pursuant to this title.

(3) CONTRACTUAL PREEMPTION.—Notwithstanding any Federal, State, or local law (other than title 11 of the United States Code), an originator may provide by contract with the borrower whether before or after default, for the settlement or extinguishment, on default, of any redemption, equitable, legal, or other right, title, or interest of the borrower in, any agricultural real estate or agricultural property that constitutes the security for an agricultural mortgage loan that is included in a pool of qualified loans for which a credit enhancement is provided under section 8.6, and concerning the terms of repayment of such a loan on the sale of collateral securing the loan.

(4) NONAPPLICABILITY OF PROVISIONS.—

(A) SUBSEQUENT STATE LAW.—Paragraphs (1) and (2) shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity, or class thereof, in any State that, prior to the expiration of the 3-year period beginning on the date of enactment of the Farm Credit Act Amendments of 1987, enacts a law that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in the securities by any person, trust, corporation, partnership, association, business trust, or business entity, or class thereof, than is provided in paragraphs (1) and (2).

(B) EFFECT OF SUBSEQUENT STATE LAW.—The enactment by any State of a law of the type described in subparagraph (A) shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior to the effective date of the law and shall not require the sale or other disposition of any securities acquired prior to the effective date of the law.

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT, AS AMENDED

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Subtitle A.—Real Estate Loans

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SEC. 307. * * *.

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(e) The Secretary may not—

(1) require any borrower to provide additional collateral to secure a farmer program loan made or insured under this title, if the borrower is current in the payment of principal and interest on the loan; or

(2) bring any action to foreclose, or otherwise liquidate, any such loan as a result of the failure of a borrower to provide additional collateral to secure a loan, if the borrower was current in the payment of principal and interest on the loan at the time the additional collateral was requested.

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SEC. 309. * * *.

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(i) The Secretary may negotiate the settlement of a guaranteed loan with a lending institution to enable the Secretary to honor a portion of a guarantee and avoid foreclosure of the loan.

(j)(1) Within 90 days after a court of competent jurisdiction approves a bankruptcy or reorganization plan under title II, United States Code, for any borrower of a farmer program loan guaranteed under this title, for the purpose of the guarantee, the Secretary shall pay the lender an amount estimated by the Secretary to be equal to the guaranteed portion of the loss incurred under the bankruptcy or reorganization plan by the lender.

(2) If the lender of a farmer program loan guaranteed under this title takes any action to cancel part of the loan and restructure the remainder consistent with such requirements and conditions as determined by the Secretary, and the Secretary approves such action, for purposes of the guarantee, the lender shall be treated as having sustained a loss equal to the amount by which the outstanding balance of the loan immediately before such action exceeds the outstanding balance of the loan immediately after such action.

(3) The Secretary shall approve the taking of an action by the lender of a guaranteed farmer program loan if such action meets the requirements and conditions as determined by the Secretary. Within 90 days of approval, the Secretary shall pay to the lender

the guaranteed portion of the amount of the loss described in paragraph (2).

(4) Any amount paid to a lender under this subsection with respect to a loan guaranteed under this title shall be treated as payment toward satisfaction of the loan guarantee.

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Subtitle D.—Administration Provisions

SEC. 331. * * *.

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SEC. 331D. NOTICE OF LOAN SERVICE PROGRAMS.

(a) REQUIREMENT.—The Secretary shall provide notice by certified mail to each farmer program borrower who is at least 180 days delinquent in the payment of principal or interest on a loan made or insured under this title.

(b) CONTENTS.—The notice required under subsection (a) shall—

(1) include a summary of all primary loan service programs and preservation loan service programs, including the eligibility criteria and terms and conditions of each program;

(2) include a summary of the manner in which the borrower may apply, and be considered for all such programs, except that the Secretary shall not require the borrower to select among such programs or waive the borrowers right to appeal, or waive any rights to be considered for any other programs carried out by the Secretary;

(3) advise the borrower regarding all filing requirements and any deadlines that must be meet for requesting loan servicing;

(4) provide any relevant forms, including applicable response forms;

(5) advise the borrower that a copy of regulations is available on request; and

(6) be designed to be readable and understandable by the borrower.

(c) CONTAINED IN REGULATIONS.—All notices required by this section shall be contained in the regulations implementing this title.

(d) TIMING.—The notice described in subsection (b) shall be provided—

(1) at the time an application is made for participation in a loan service program;

(2) on the written request of the borrower; and

(3) prior to the earliest of—

(A) initiating any liquidation;

(B) requesting the conveyance of security property;

(C) accelerating the loan;

(D) repossessing property;

(E) foreclosing on property; or

(F) taking any other collection action.

(e) LOAN SERVICE PROGRAMS.—The Secretary shall consider a farmer program borrower for all loan service programs if, within 45 days of receipt of the notice required in this section, the borrower requests such consideration in writing.

SEC. 332. COUNTY COMMITTEES.

(1) In each county or area in which activities are carried out under this title, there shall be a county committee composed of three members. Two members shall be elected, from among their number, by farmers [deriving the principal part of their income from farming] who reside within the county or area, and one member, who shall reside within the county or area, shall be appointed by the Secretary for a term of three years. At the first election of county committee members under this subsection, one member shall be elected for a term of one year and one member shall be elected for a term of two years. Thereafter, elected members of the county committee shall be elected for a term of three years. The Secretary, in selecting the appointed member of the county committee, shall ensure that, to the greatest extent practicable, the committee is fairly representative of the farmers in the county or area. The Secretary may appoint an alternate for each member of the county committee. Appointed and alternate members of the county committee shall be removable by the Secretary for cause. The Secretary shall issue such regulations as are necessary relating to the election and appointment of members and alternate members of the county committees *prior to conducting any county committee election. The Secretary shall publish any regulation promulgated under this subsection, and complete elections consistent with this section.*

(2) The Secretary shall assure that farmers have—

(A) at least 45 days to submit nominations following the general public notice of any procedure by which to submit nominations for county committee elections in each county; and

(B) at least 30 days, following the general public notice of an election in each county, before an election is held.

(3) For purposes of this subsection, the term 'farmer' shall include the spouse of a farmer otherwise eligible under this section.

SEC. 333. * * *.

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SEC. 333B. * * *.

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(d) The Secretary shall establish and maintain within the Farmers Home Administration a national appeals division, which shall consist of a director, hearing officers, and such other personnel necessary to the administration of the division, all of whom shall be employees of the Farmers Home Administration who shall have no duties other than hearing and determining formal appeals arising under this section.

(e) Hearing officers within the appeals division shall hear and determine all formal appeals from decisions subject to this section made by county supervisors, county committees, district directors, State directors, or other employees of the Secretary working within a State. Such hearings shall be held within the State of the appellant. The decisions of hearing officers shall, upon the request of the appellant, be reviewed by the State director in the appellant's State. On request of the appellant, the decisions of the State director on review shall be subject to further review by the director of the na-

tional appeals division. Upon request made to a State director for review, the State director may, if the appeal presents particularly important administrative, policy, or legal questions that require decision, decline review and transmit the matter to the director of the national appeals division for immediate review.

(f) Hearing officers within the national appeals division shall report to the principal officers of the division, and shall not be under the direction and control of, or receive administrative support (except on a reimbursable basis) from, offices other than the national appeals division.

(g) The Secretary shall ensure that the national appeals division has resources and personnel adequate to hear and determine all initial appeals within the State of the appellant on a timely basis, and that hearing officers receive training and retraining adequate for their duties upon initial employment and at regular intervals thereafter. The Secretary may spend sums available in the Farmers Home Administration's various revolving insurance funds for the purposes of this subsection in the event that necessary appropriations sufficient to fund the division are not available.

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SEC. 335. * * *

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(e)[(1) The Secretary shall to the extent practicable sell or lease farmland administered under this title in the following order of priority:

[(A) Sale of such farmland to operators (as of the time immediately before such sale) of not larger than family-size farms.

[(B) Lease of such farmland to operators (as of the time immediately before such lease is entered into) of not larger than family-size farms.]

(1)(A)(i) During the 180-day period beginning on the date of acquisition, or during the applicable period under State law, whichever is longer, the Secretary shall allow a borrower-owner to purchase or lease real property that has been—

(I) used to secure any loan made to the borrower-owner under this title; and

(II) foreclosed, purchased, redeemed, or otherwise acquired by the Secretary.

(ii) The period for the purchase or lease of real property described under clause (i), by a person described in clauses (i) or (ii) of subparagraph (C), shall expire 190 days after the date of acquisition, or after the applicable period under State law, whichever is longer.

(iii) The rights regarding the purchase or lease of real property provided by this paragraph and accorded a person described in subparagraph (C), may be waived by such person if such waiver is freely and knowingly given.

(B) Any purchase or lease under subparagraph (A), shall be on such terms and conditions as are established in regulations promulgated by the Secretary.

(C) The Secretary shall give preference in the sale or lease, with option to purchase, of property that has been foreclosed, purchased,

redeemed, or otherwise acquired by the Secretary to persons in the following order:

(i) The immediate previous Farmers Home Administration borrower-owner of the acquired property.

(ii) If actively engaged in farming—

(I) the spouse or child of the previous borrower-owner; or

(II) a stockholder in the corporation, if the previous borrower-owner is a corporation held exclusively by members of the same family.

(iii) Operators (as of the time immediately after such sale or lease is entered into) of not larger than family-size farms.

(D)(i)(I) In the case of any property located within an Indian reservation, if the period for the right of purchase or lease of real property by the persons provided in clauses (i) and (ii) of subparagraph (A) has expired, the Secretary shall dispose of or administer the property only as provided for in this subparagraph.

(II) For purposes of this subparagraph the term "Indian reservation" means all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, land located within the jurisdictional boundaries of a Federally recognized tribe in the State of Oklahoma, or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian tribe.

(ii) The Secretary shall, within 90 days after the rights of purchase or lease of the previous borrower-owner and the immediate family have expired, afford an opportunity to purchase or lease the lands in the following order, to—

(I) an Indian member of any Federally recognized Indian tribe;

(II) an Indian corporate entity; or

(III) the Federally recognized Indian tribe with jurisdiction over the Indian reservation within which the lands are located.

If the Indian tribe is unable to purchase or lease the lands, the Secretary shall transfer such lands to the Secretary of the Interior who shall administer such lands as if the lands were held in trust by the United States for the benefit of such Indian tribe.

(iii) All rental income derived from the lease of the real property, and all other income generated from lands transferred to the Secretary of the Interior pursuant to this subparagraph, shall, after payment by applicable State, county, municipal or other local taxes be desposited in the miscellaneous receipts of the United States Treasury until an amount is paid that is equal to the lesser of—

(I) the amount of the outstanding lien of the United States against such land, as of the date the land was acquired by the Secretary;

(II) the fair market value of the land, as of the date of the transfer; or

(III) the capitalized value of the land, as of the date of the transfer.

(iv) If the conditions of clause (iii) have been satisfied, title to the subject land shall be held in trust by the United States for the benefit of the Indian tribe within whose Indian reservation the lands are located.

(v) Notwithstanding clauses (ii) and (iii), the Indian tribe within whose Indian reservation the acquired lands are located may, at any time after the lands have been transferred to the Secretary of the Interior, offer to pay the remaining amount of the lien, or the fair market value of the land, whichever is less. On payment of such amount, title to such lands shall be held by the United States in trust for the tribe.

(2) The Secretary shall not offer for sale or sell any such farmland if the placing of such farmland on the market will have a detrimental effect on the value of farmland in the area.

(3)[(A) The Secretary shall consider granting, and may grant, to an operator of not larger than a family-size farm, in conjunction with paragraph (3), a lease with an option to purchase farmland administered under this title.]

[(B)] *(A)* The Secretary shall issue regulations providing for leasing such land, or leasing such land with an option to purchase, on a fair and equitable basis.

[(C)] *(B)* In leasing such land, the Secretary shall [give special consideration to a previous owner or operator of such land if such owner or operator] *determine if the lessee* has financial resources, and farm management skills and experience, that the Secretary determines are sufficient to assure a reasonable prospect of success in the proposed farming operation.

[(D)] *(C)* To the extent the Secretary may lease or operate real property under this subsection, the Secretary shall, if the Secretary determines to administer such property through management contracts, offer the contracts on a competitive bid basis, giving preference to persons who will live in, and own and operate qualified small businesses in, the area where the property is located.

(D) Notwithstanding any other provision of law, Indian reservation land, as defined in paragraph (1)(D)(i)(II), that is subject to State, county, municipal, or other local taxation on the day before it is purchased by—

(i) purchased by an Indian member of any Federal recognized Indian tribe;

(ii) purchased by an Indian corporate entity; or

(iii) purchased by the Federally recognized Indian tribe with jurisdiction over the Indian reservation within which the lands are located; or

(iv) or transferred to the Secretary of Interior under paragraph (1)(D)(ii);

shall not be exempt from any such taxation by operation or implementation of this section.

(E) The Secretary may enter into a contract with a borrower of a farmer program loan made or insured under this title, to provide for the subsequent sale or lease of land that will be acquired from the borrower in the future, before the Secretary actually legally acquires such land.

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(6) If suitable farmland is available for disposition under this subsection, the Secretary shall—

(A) publish an announcement of the availability of such farmland in at least one newspaper that is widely circulated in the county in which the farmland is located; [and]

(B) post an announcement of the availabilty of such farmland in a porminent place in the local office of the Farmers Home Administration that serves the county in which the farmland is located[.] *and*

(C) provide written notice of the availability of such farmland to the immediate previous owner of such land within 30 days of acquisition of the property.

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(9) Denials of applications for or disputes over terms and conditions of a lease or purchase agreement under this section are appealable under section 333B.

(f)(1) As used in this subsection, the term 'normal income security' means all security not considered basic security, including crops, livestock, poultry products, Agricultural Stabilization and Conservation Service payments and Commodity Credit Corporation payments, and other property covered by Farmers Home Administration liens that is sold in conjunction with the operation of a farm or other business, but shall not include any equipment (including fixtures in States that have adopted the Uniform Commercial Code), or foundation herds and flocks, that are the basis of the farming or other operation, and are the basic security for a Farmers Home Administration farmer program loan.

(2) The Secretary shall release from the normal income security provided for such loan, an amount sufficient to pay for the essential household and farm operating expenses of the borrowers, until such time as the Secretary accelerates such loan.

(3) A borrower whose account was accelerated between November 1, 1985 and May 7, 1987, but not thereafter foreclosed or liquidated, shall be entitled to the release of security income for a period of 12 months, to pay the essential household and farm operating expenses of such borrower in an amount not to exceed $18,000, over 12 months, if such borrower—

(A) as of October 30, 1987, continues to be actively engaged in the farming operations for which the Secretary had made the farmer programs loan; and

(B) as of the deadline for responding to the notice provided for under paragraph (5), requests restructuring of such loans pursuant to section 353.

(4) The county committee in the county in which borrower's land is located shall determine whether the borrower complies with the requirements of paragraph (3)(A).

(5)(A) The Secretary shall provide notice, by certified mail, within 45 days of the date of enactment of the Farm Credit Act Amendments of 1987, to the borrowers described in paragraph (3), of the right of such borrowers to apply for the benefits of such paragraph.

(B) Releases under such paragraph shall be made to qualified borrowers who have responded to the notice within 30 days of receipt.

(C) With regard to each borrower who has requested restructuring under section 353, the Secretary shall make a final determination on the request for restructuring within 12 months. Notwithstanding

the 12-month limitation provided for in paragraph (3), releases shall continue to be made to each such borrower until a denial or dismissal of the application of the borrower for restructuring under section 353 is made. The amount of essential household and farm operating expenses may exceed $18,000, by an amount proportionate to the period of time beyond 12 months before a final determination is made by the Secretary, for any such borrower eligible for such releases after 12 months.

(6) If a borrower is required to plan for or to report on how proceeds from the sale of collateral property will be used, the Secretary shall—

(A) notify the borrower of such requirement; and

(B) notify the borrower of the right to the release of funds under this section and the means by which a request for the funds may be made.

(7) The Secretary shall issue regulations consistent with this section that—

(A) ensure the release of funds to each borrower; and

(B) establish guidelines for releases under paragraph (3), including a list of expenditures for which funds will normally be released.

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*SEC. 338. * * **

(f)(1)(A) The guaranteed portion of any loan under this title may be sold by the lender, and by any subsequent holder, in accordance with regulations prescribing such sales as the Secretary shall estabish, subject to the following limitations:

((i) All fees due the Secretary with respect to a guaranteed loan are to be paid in full before any sale.

(ii) The loan is to have been fully disbursed to the borrower before the sale.

(B) After a loan is sold in the secondary market, the lender shall remain obligated under its agreement with the Secretary, and shall continue to service the loan in accordance with the terms and conditions of such agreement.

(C) The Secretary shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase in the access of producers to capital at reasonable rates and terms as a result of secondary market operations.

(D) This subsection shall not impede or extinguish the duty of the borrower, or the successor in inerest to the borrower, to repay (in whole or in part) any loan made under this title.

(2)(A) The market makers approved by the Secretary may issue pool certificates representing ownership of part, or all, of the portion of any loan guaranteed by the Secretary under this title. Such certificates shall be based on and backed by a pool established or approved by the Secretary and composed solely of the entire guaranteed portion of such loans.

(B)(i) The Secretary may, on such terms and conditions as the Secretary considers appropriate, guarantee the timely payment of the principal and interest on pool certificates by approved market makers. Such guarantee shall not exceed the extent of principal and

interest on the guaranteed portions of the loans that compose the pool.

(ii) If a loan in such pool is prepaid, either voluntarily or by reason of default, the guarantee of timely payment of principal and interest on the pool certificates shall be reduced in proportion to the amount of principal and interest represented in the pool by the prepaid loan.

(iii) During the term of the pool certificate, the certificate may be called for redemption due to repayment or default of all loans constituting the pool.

(C) The full faith and credit of the United States is pledged to the payment of all amounts that may be required to be paid under any guarantee of such pool certificates issued by approved market makers under this subsection. The Secretary may use the Agricultural Credit Insurance Fund for payments on such guarantees.

(D) The Secretary shall not collect any fee for any guarantee under this subsection. The preceding sentence shall not preclude the Secretary from collecting a fee for the functions described in paragraph (3).

(E)(i) If the Secretary pays a claim under a guarantee issued under this subsection, the claim shall be subrogated fully to the rights satisfied by such payments, as may be provided by the Secretary.

(ii) No Federal, State, or local law shall preclude or limit the exercise of the ownership rights of the Secretary in those portions of loans constituting the pool against which the certificates are issued.

(3) On the adoption of final rules and regulations, the Secretary shall do the following:

(A) Provide for the central collection of registration information from all participating market makers for all loans and pool certificates. Such information shall include, with respect to each original sale and any subsequent sale—

(i) identification of the interest rate paid by the borrower to the lender;

(ii) the servicing fee of the lender;

(iii) whether interest on the loan is at a fixed or variable rate;

(iv) identification of each purchaser of a pool certificate, and the interest rate paid on the certificate; and

(v) such other information as the Secretary considers appropriate.

(B) Provide such credit enhancement, through private sources or otherwise, as is reasonably necessary to recover estimated costs of paying claims under guarantees issued under this section.

(C) Before any sale, require the seller to disclose to each prospective purchaser of the portion of a loan guaranteed under this title and, to each prospective purchaser of a pool certificate issued pursuant to paragraph (2), information on the terms, conditions, and yields of such instrument. As used in this subparagraph, if the instrument being sold is a loan, the term 'seller' does not include (i) the person who made the loan or (ii) any person who sells three or fewer guaranteed loans per year.

(D) Provide for adequate custody of any pooled guaranteed loans.

(E) Require each market maker—

(i) to service all pools formed, and participations sold, by the market maker; and

(ii) to provide the Secretary with information relating to the collection and disbursement of all periodic payments and prepayments to or from the reserve fund which the Secretary shall establish to enable the timely payment guarantee to be self-funding, and from all beneficial holders.

(F) Regulate market makers in pool certificates sold pursuant to subparagraphs (A) and (B).

(4)(A) Not later than March 31 of each year, the Secretary shall submit to the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report on the secondary market operations under this subsection during the preceding calendar year.

(B) Each report under subparagraph (A) shall include—

(i) the number and the total dollar amount of loans sold in the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the interest rate is fixed or variable, and premium paid;

(ii) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premium;

(iii) the number and total dollar amount of pools formed;

(iv) the number and total dollar amount of loans in each pool;

(v) the dollar amount, interest rate, and terms on each loan in each pool, and whether the interest rate is fixed and variable;

(vi) the number, face value, interest rate, and terms of the pool certificates issued for each pool;

(vii) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to farmers; and

(viii) an analysis of the information reported in clauses (i) through (vii) to assess the access of farmers to capital at reasonable rates and terms as a result of secondary market operations.

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SEC. 343. DEFINITIONS.

(a) As used in this title (1) the term "farmers" shall be deemed to include persons who are engaged in, or who, with assistance afforded under this title, intend to engage in fish farming, (2) the term "farming" shall be deemed to include fish farming, and (3) the term "owner-operator" shall include in the State of Hawaii the lessee-operation of real property in any case in which the Secretary determines that such real property cannot be acquired in fee simple by such lessee-operator, that adequate security is provided for the loan with respect to such real property for which such lessee-operator applies under this title, and that there is reasonable probability of accomplishing the objectives and repayment of such

loan, (4) the word "insure" as used in this title includes guarantee, which means to guarantee the payment of a loan originated, held, and serviced by a private financial agency or other lender approved by the Secretary, (5) the term "contract of insurance" includes a contract of guarantee, (6) the terms "United States" and "State" shall include each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, to the extent the Secretary determines it to be feasible and appropriate, the Trust Territory of the Pacific Islands, and (7) the term "joint operation" means a joint farming operation in which two or more farmers work together sharing equally or unequally land, labor, equipment, expenses, and income.

(b) As used in sections 307(e), 309(i), and (j), 331D, 335(e), 335(f), 338(f), 351(f), 352(b) and (c), and 353:

(1) The term "borrower" means all Farmers Home Administration borrowers, including farmer program borrowers whose debt obligation to the Secretary have been accelerated but not foreclosed upon or liquidated, voluntarily or otherwise.

(2) The term "loan service program" means, with respect to a farmer program borrower, a primary loan service program or a preservation loan service program.

(3) The term "preservation loan service program" means—

(A) homestead retention as authorized under section 352; and

(B) a leaseback or buyback of farmland authorized under section 335.

(4) The term "primary loan service program" means—

(A) loan consolidation, rescheduling, or reamortization;

(B) interest rate reduction, including the use of the limited resource program;

(C) loan restructuring, including deferral, set aside, or writing down of the principal or accumulated interest charges, or both, of the loan; or

(D) any combination of actions described in subparagraphs (A), (B) and (C).

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SEC. 349. * * *

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(c) Such easement may be acquired or retained for real property if such property—

(1) is wetland, upland, or highly erodible land;

(2) is determined by the Secretary to be suitable for the purposes involved;

(3)(A)(i) secures any loan made under any law administered by the Farmers Home Administration and held by the Secretary; and

(ii) the borrower of such loan is unable, as determined by the Secretary, to repay such loan in a timely manner; or

(B) is administered under this title by the Secretary; and

(4) was (except in the case of wetland *and other wildlife habitat*) row cropped each year of the 3-year period ending on the date of the enactment of the Food Security Act of 1985.

(d) The terms and conditions specified in each such easement shall—

(1) specify the purposes for which such real property may be used;

(2) identify the conservation measures to be taken, and the recreational and wildlife uses to be allowed, with respect to such real property; and

(3) require such owner to permit the Secretary, and any person or governmental entity designated by the Secretary, to have access to such real property for the purpose of monitoring compliance with such easement.

(e) Any such easement acquired by the Secretary shall be purchased from the borrower involved by canceling that part of the aggregate amount of such outstanding loans of the borrower held by the Secretary under laws administered by the Farmers Home Administration that bears the same ratio to the aggregate amount of the outstanding loans of such borrower held by the Secretary under all such laws as the number of acres of the real property of such borrower that are subject to such easement bears to the aggregate number of acres securing such loans. [In no case shall the amount so canceled exceed the value of the loans on which the easement is acquired.] *In no case shall the amount so canceled exceed the difference between the amount of the outstanding loan secured by the land and the current value of the land.*

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SEC. 351. * * *

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(e)(1) Notwithstanding any other provision of this title, the Agricultural Credit Insurance Fund established under section 309 may be used by the Secretary to carry out this section.

(2) The total amount of funds used by the Secretary to carry out this section may not exceed $490,000,000.

(f)(1) The Secretary shall establish and carry out, during the 3-year period beginning on the date of enactment of the Farm Credit Act Amendments of 1987, a demonstration project in accordance with this subsection under which the Secretary may issue certificates of eligibility to Farmers Home Administration eligible borrowers to reduce the interest rate paid by the borrowers on loans obtained from legally organized lending institutions and Farm Credit System institutions to purchase acquired properties owned by institutions of the Farm Credit System that are certified to issue preferred stock under section 6.27 of the Farm Credit Act of 1971.

(2) To be eligible to participate in the project, a borrower must—

(A) meet the requirements of subsection (b)(1);

(B) provide a down payment to purchase the land using personal funds of the borrower, equal to at least 15 percent of the purchase price of the land; and

(C) meeting all conservation requirements for the land that are imposed on borrowers of guaranteed farm ownership loans under this title.

(3) A Certificate of eligibility issued under this subsection may be used to reduce the interest rate payable by an eligible borrower on a guaranteed loan by not more than 4 percent.

(4) A Certificate of eligibility issued under this subsection shall reduce the interest rate on a guaranteed loan for a term equal to the outstanding term of such loan, or 5 years, whichever is less.

(5) Notwithstanding any other provision of law, if the lender of a guaranteed loan assisted under this subsection reduces the interest rate payable on the loan by at least 1 percent, the Secretary may guarantee the repayment of 95 percent of the principal and interest due on the loan.

(6) In carrying out this subsection, the Secretary may—

(A) certify the eligibility of borrowers to participate in the demonstration project;

(B) process applications for participation in the project;

(C) provide certificates of eligibility to eligible borrowers on a timely basis consistent with the availability of acquired properties owned by institutions of the Farm Credit System that are certified to issue preferred stock under section 6.27 of the Farm Credit Act of 1971; and

(D) set aside the largest practicable portion of funds made available to guarantee farm ownership loans under this title (including unobligated funds) to carry out this subsection.

(7) To carry out this subsection the Secretary may transfer such amounts as may be necessary from farm operating guaranteed loans to farm ownership guaranteed loans.

(8) In carrying out this subsection, Farm Credit System institutions shall—

(A) sell land to eligible borrowers under this subsection at fair market value;

(B) to the extent paracticable, set aside each fiscal year for purchase by eligible borrowers, in accordance with this subsection, land acquired or owned by such institutions of the Farm Credit System in an aggregate amount not to exceed $250,000,000 at fair market value; and

(C) if necessary, subdivide tracts of land made available under this subsecton into parcels that permit eligible borrowers to purchase the parcels consistent with limits placed on the size of loans made, insured, or guaranteed under this title.

(9) Not later than 60 days after the date of enactment of the Farm Credit Act Amendments of 1987, the Secretary and the Farm Credit Administration shall develop a joint memorandum of understanding governing the implementation of this subsection.

SEC. 352. HOMESTEAD PROTECTION.

(a) As used in this section:

(1) Ther term "Administrator" means the Adminstrator of the Small Business Administration.

(2) The term "farm program loan" means any loan made by the Administrator under the Small Business Act (15 U.S.C. 631 et seq.) for any of the purposes authorized for loans under sub-

titles A or B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

(3) The term "homestead property" means the principal residence and adjoining property possessed and occupied by a borrower specified in paragraph (2) of this subsection, *including a reasonable number of farm outbuildings located on the adjoining land that are useful to the occupants of the homestead, and no more than 10 acres of adjoining land that is used to maintain the family of the individual.*

(4) The term "Secretary" means the Secretary of Agriculture.

(b)[(1) If the Secretary forecloses a loan made or insured under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), the Administrator forecloses a farm program loan made under the Small Business Act (15 U.S.C. 631 et seq.), or a borrower of a loan made or insured by either agency declares bankruptcy or goes into voluntary liquidation to avoid foreclosure or bankruptcy, the Secretary or Administrator may upon application by the borrower, permit the borrower to retain possession and occupancy of any principal residence of the borrower, and a reasonable amount of adjoining land for the purpose of family maintenance.]

(1) The Secretary or the Administrator may, on application by a borrower, permit the borrower to retain possession and occupancy of homestead property under the terms set forth, and until the action described in this section has been completed, if—

(A) the Secretary forecloses, holds in inventory on the date of the enactment of the Farm Credit Act Amendments of 1987, or takes into inventory, property securing a loan made or insured under this title;

(B) the Administrator forecloses, holds in inventory on the date of the enactment of the Farm Credit Act Amendments of 1987, or takes into inventory, property securing a farm program loan made under the Small Business Act (15 U.S.C. 631 et seq.); or

(C) the borrower of a loan made or insured by either entity referred to in subparagraphs (A) and (B) files a petition in bankruptcy or agrees to voluntarily liquidate or convey such property in whole or in part.

(2) The value of the homestead property shall be determined insofar as possible by an independent appraisal made within six months from the date of the borrower's application to retain possession and occupancy of the homestead property.

(3) The period of occupancy of homestead property under this subsection may not exceed five years, but in no case shall the Secretary or the Administrator grant a period of occupancy less than three years, subject to compliance with the requirements of subsection (c).

[(c) To be eligible to occupy homestead property, a borrower of a loan made or insured by the Secretary or the Administrator must—

[(1) apply for such occupancy during the three-year period beginning on the date of the enactment of this Act;

[(2) have exhausted all other remedies for the extension or restructuring of such loan, including all remedies afforded under section 331(d);

[(3) have made gross annual farm sales of at least $40,000 in at least two calendar years during the five-year period beginning on January 1, 1981, and ending on December 31, 1985 (or the equivalent crop or fiscal years);

[(4) have received from farming operations at least 60 per centum of the gross annual income of the borrower and any spouse of the borrower during at least two years of such five-year period;

[(5) have occupied the homestead property, and engaged in farming or ranching operations on adjoining land, or other land controlled by said borrower, during such five-year period;

[(6) during the period of occupancy of the homestead property, pay a reasonable sum as rent for such property to the Secretary or the Administrator in an amount substantially equivalent to rents charged for similar residential properties in the area in which the homestead property is located, and failure to make rental payments in a timely fashion shall constitute cause for the termination of all rights of a borrower to possession and occupancy of the homestead property under this subsection;

[(7) during the period of occupancy of homestead property, maintain such property in good condition; and

[(8) agree to such other terms and conditions as are prescribed by the Secretary or the Administrator in order to facilitate the administration of this subsection.]

(c)(1) To be eligible to occupy homestead property, a borrower of a loan made or insured by the Secretary or the Administrator shall—

(A) apply for such occupancy not later than 90 days after the property is acquired by the Secretary or Administrator, or for property in inventory on the date of enactment of the Farm Credit Act Amendments of 1987, the borrower shall apply for occupancy not later than 90 days after such date;

(B) have received from farming or ranching operations gross farm income reasonably commensurate with—

(i) the size and location of the farming unit of the borrower; and

(ii) local agricultural conditions (including natural and economic conditions), in at least 2 calendar years during the 6-year period preceding the calendar year in which the application is made;

(C) have received from farming or ranching operations at least 60 percent of the gross annual income of the borrower and any spouse of the borrower in at least 2 calendar years during any 6-year period described in subparagraph (B);

(D) have continuously occupied the homestead property during the 6-year period described in subparagraph (B);

(E) during the period of the occupancy of the homestead property, pay as reasonable sum as rent for such property to the Secretary or the Administrator in an amount substantially equivalent to rents charged for similar residential properties in the area in which the homestead property is located;

(F) during the period of the occupancy of the homestead property, maintain the property in good condition; and

(G) meet such other reasonable and necessary terms and conditions as the Secretary may require consistent with this section.

(2) For purposes of subparagraph (B) and (C) of paragraph (1), the term "farming or ranching operations" shall include rent paid by lessees of agricultural land during any period in which the borrower, due to circumstances beyond the control of the borrower, is unable to actively farm such land.

(3) For the purposes of paragraph (1)(E), the failure of the borrower to make timely rental payments shall constitute cause for the termination of all rights of such borrower to possession and occupancy of the homestead property under this section.

(4)(A) The period of occupancy allowed the prior owner of homestead property under this section shall be the period requested in writing by the prior owner, except that such period shall not exceed 5 years.

(B) At any time during the period of occupancy, the borrower shall have a right of first refusal to reacquire the homestead property on such terms and conditions as the Secretary shall determine, except that the Secretary may not demand a payment for the homestead property that is in excess of the current market value of the homestead property as established by an independant appraisal.

(5) No rights of a borrower under this section, and no agreement entered into between the borrower and the Secretary for occupancy of the homestead property, shall be transferable or assignable by the borrower or by operation of any law, except that in the case of death or incompetency of such borrower, such rights and agreements shall be transferable to the spouse of the borrower if the spouse agrees to comply with the terms and conditions thereof.

(6) Within 30 days of the acquisition of the homestead property securing a loan made or insured under this title, the Secretary shall notify the borrower from whom the property was acquired by the availability of homestead protection rights under this section. For property already in inventory on the date of enactment of the Farm Credit Act Amendments of 1987, the Secretary shall make a good faith effort to notify the borrower of the availability of homestead protection rights under this section within 60 days of such date.

(d) At the end of the period of occupancy described in subsection (c), the Secretary or the Administrator shall grant to the borrower a frist right of refusal to reacquire the homestead property on such terms and conditions (which may include payment of principal in installments) as the Secretary or the Administrator shall determine. *Such terms and conditions shall not be less favorable than those intended to be offered to any other buyer.*

(e) At the time any reacquisition agreement is entered into, the Secretary or the Administrator may not demand a total payment of principal that is in excess of the value of the homestead property as established under subsection (b)(2).

(f) The Secretary may enter into contracts authorized by this section before the Secretary acquires title to the homestead property.

SEC. 353. DEBT RESTRUCTING AND LOAN SERVICING.

(a) IN GENERAL.—The Secretary shall modify delinquent loans made or insured under this title, or purchased from the lender or the Federal Deposit Insurance Corporation under section 309B, to the maximum extent possible—

(1) to avoid losses to the Secretary on such loans, with priority consideration being placed on writing-down the loan principal and interest (subject to subsections (d) and (e)), and debt set-aside (subject to subsection (e)), whenever these procedures would facilitate keeping the borrower on the farm or ranch, or otherwise through the use of primary loan service programs as provided in this section; and

(2) to ensure that borrowers are able to continue farming or ranching operations.

(b) ELIGIBILITY.—To be eligible to obtain assistance under subsection (a)—

(1) the delinquency must be due to circumstances beyond the control of the borrower, as defined in regulations issued by the Secretary;

(2) the borrower must have acted in good faith with the Secretary in connection with the loan as defined in regulations issued by the Secretary;

(3) the borrower must present a plan to the Secretary that contains reasonable assumptions that demonstrate that the borrower will be able to—

(A) meet the necessary family living and farm operating expenses; and

(B) service all debts, including those of the loans restructured; and

(4) the loan, if restructured, must result in a net recovery to the Federal government, during the term of the loan as restructured, that would be more than or equal to the net recovery to the Federal government from an involuntary liquidation or foreclosure on the property securing the loan.

(c) RESTRUCTURING DETERMINATIONS.—

(1) DETERMINATION OF NET RECOVERY.—In determining the net recovery from the involuntary liquidation of a loan under this section, the Secretary shall calculate—

(A) the recovery value of the collateral securing the loan, in accordance with paragraph (2); and

(B) the value of the restructured loan, in accordance with paragraph (3).

(2) RECOVERY VALUE.—For the purpose of paragraph (1), the recovery value of the collateral securing the loan shall be based on—

(A) the amount of the current appraised value of the property securing the loan; less

(B) the estimated administrative, legal, and other expenses associated with the liquidation and disposition of the loan and collateral, including—

(i) the payment of prior liens;

(ii) taxes and assessments, depreciation, management costs, the yearly percentage decrease or increase in the value of the property, and lost interest income, each

calculated for the average holding period for the type of property involved;

(iii) resale expenses, such as repairs, commissions, and advertising; and

(iv) other administrative and attorney's costs.

(3) VALUE OF THE RESTRUCTURED LOAN.—

(A) IN GENERAL.—For the purpose of paragraph (1), the value of the restructured loan shall be based on the present value of payments that the borrower would make to the Federal government if the terms of such loan were modified under any combination of primary loan service programs to ensure that the borrower is able to meet such obligations and continue farming operations.

(B) PRESENT VALUE.—For the purpose of calculating the present value referred to in subparagraph (A), the Secretary shall use a discount rate of not more than the current rate on 90-day Treasury bills.

(4) NOTIFICATION.—Within 60 days after receipt of a written request for restructuring from the borrower, the Secretary shall—

(A) make the calculations specified in paragraphs (2) and (3);

(B) notify the borrower in writing of the results of such calculations; and

(C) provide documentation for the calculations.

(5) RESTRUCTURING OF LOANS.—If the value of the restructured loan is greater than or equal to the recovery value, the Secretary shall, within 45 days after notifying the borrower of such calculations, offer to restructure the loan obligations of the borrower under this title through primary loan service programs that would enable the borrower to meet the obligations (as modified) under the loan and to continue the farming operations of the borrower. If the borrower accepts such offer, within 45 days after receipt of notice of acceptance, the Secretary shall restructure the loan accordingly.

(d) PRINCIPAL AND INTEREST WRITE-DOWN.—

(1) IN GENERAL.—In selecting the restructuring alternatives to be used in the case of a borrower who has requested restructuring under this section, the Secretary shall give priority consideration to the use of principal and interest write-down, except that this procedure shall not be required in the case of a borrower unless other creditors of such borrower (other than those creditors who are fully collateralized) representing a substantial portion of the total debt of the borrower held by such creditors, agree to participate in the development of the restructuring plan or agree to participate in a State mediation program.

(2) PARTICIPATION OF CREDITORS.—Before eliminating the option to use debt write-down in the case of a borrower, the Secretary shall make a reasonable effort to contact the creditors of such borrower, either directly or through the borrower, and encourage such creditors to participate with the Secretary in the development of a restructuring plan for the borrower.

(e) SHARED APPRECIATION ARRANGEMENTS.—

(1) IN GENERAL.—As a condition of restructuring a loan in accordance with this section, the borrower of the loan may be required to enter into a shared appreciation arrangement that requires the repayment of amounts written off or set aside.

(2) TERMS.—Shared appreciation agreements shall have a term not to exceed 10 years, and shall provide for recapture based on the difference between the appraised values of the real security property at the time of restructuring and at the time of recapture.

(3) PERCENTAGE OF RECAPTURE.—The amount of the appreciation to be recaptured by the Secretary shall be 75 percent of the appreciation in the value of such real security property if the recapture occurs within 4 years of the restructuring, and 50 percent if the recapture occurs during the remainder of the term of the agreement.

(4) TIME OF RECAPTURE.—Recapture shall take place at the end of the term of the agreement, or sooner—

(A) on the conveyance of the real security property;

(B) on the repayment of the loans; or

(C) if the borrower ceases farming operations.

(5) TRANSFER OF TITLE.—Transfer of title to the spouse of a borrower on the death of such borrower shall not be treated as a conveyance for the purpose of paragraph (4).

(f) DETERMINATION TO RESTRUCTURE.—If the appeal process results in a determination that a loan is eligible for restructuring, the Secretary shall restructure the loan in the manner consistent with this section, taking into consideration the restructuring recommendations, if any, of the appeals officer.

(g) PREREQUISITES TO FORECLOSURE OR LIQUIDATION.—No foreclosure or other similar actions shall be taken to liquidate any loan determined to be ineligible for restructuring by the Secretary under this section—

(1) until the borrower has been given the opportunity to appeal such decision; and

(2) if the borrower appeals, the appeals process has been completed, and a determination has been made that the loan is ineligible for restructuring.

(h) TIME LIMITS FOR RESTRUCTURING.—Once an appeal has been filed under section 333B, a decision shall be made at each level in the appeals process within 45 days after the receipt of the appeal or request for further review.

(i) NOTICE OF INELIGIBILITY FOR RESTRUCTURING.—

(1) IN GENERAL.—A notice of ineligibility for restructuring shall be sent to the borrower by registered or certified mail within 15 days after such determination.

(2) CONTENTS.—The notice required under paragraph (1) shall contain—

(A) the determination and the reasons for the determination;

(B) the computations used to make the determination, including the calculation of the recovery value of the collateral securing the loan; and

(C) a statement of the right of the borrower to appeal the decision to the appeals division, and to appear before a hearing officer.

(j) INDEPENDENT APPRAISALS.—An appeal filed with the appeals division under section 333B may include a request by the borrower for an independent appraisal of any property securing the loan. On such request, the appeals division shall arrange for the independent appraisal, the cost of which shall be borne by the borrower. the results of such appraisal shall be considered in any final determination concerning the loan. A copy of any appraisal made under this paragraph shall be provided to the borrower.

(k) TERMINATION OF RESTRUCTURED LOANS.—

(1) NOTICE.—If, at any time after the end of 18 months after the obligations of a farmer program borrower have been restructured in accordance with this section the borrower is, and has for a period of at least 180 days remained, delinquent in the repayment of the restructured loan, the Secretary shall give notice to the borrower of the intention of the Secretary to accelerate the loan and foreclose on all collateral used to secure the loan and to terminate all additional assistance to the borrower.

(2) TERMINATION.—Unless, within 60 days after issuance of the notice required by paragraph (1), the borrower becomes current with respect to all obligations as restructured, the Secretary shall terminate all further assistance to the borrower and shall proceed to acceleration, foreclosure, or liquidation. The Secretary, at the Secretary's discretion, may waive this paragraph in exceptional circumstances.

SEC. 354. TRANSFER OF INVENTORY LANDS.

The Secretary, without reimbursement, may transfer to any Federal or State agency, for conservation purposes any real property, or interest therein, administered by the Secretary under this Act—

(1) with respect to which the rights of all prior owners and operators have expired;

(2) that is determined by the Secretary to be suitable or surplus; and

(3) that—

(A) has marginal value for agricultural production;

(B) is environmentally sensitive; or

(C) has special management importance.

FOOD SECURITY ACT OF 1985

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TITLE XII—CONSERVATION

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Subtitle D—Conservation Acreage Reserve

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CONTRACTS

SEC. 1235. (a)(1) No contract shall be entered into under this subtitle concerning land with respect to which the ownership has changed in the 3-year period preceding the first year of the contract period unless—

(A) the new ownership was acquired by will or succession as a result of the death of the previous owner;

(B) the new ownership was acquired before January 1, 1985; [or]

(C) the Secretary determines that the land was acquired under circumstances that give adequate assurance that such land was not acquired for the purpose of placing it in the program established for this subtitle[.] *or*

(D) the ownership change occurred due to foreclosure on the land and the owner of the land immediately prior to the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law.

(2) Paragraph (1) shall not—

(A) prohibit the continuation of an agreement by a new owner after an agreement has been entered into under this subtitle; or

(B) require a person to own the land as a condition of eligibility for entering into the contract if the person—

(i) has operated the land to be covered by a contract under this section for at least 3 years preceding the date of the contract or since January 1, 1985, whichever is later; and

(ii) controls the land for the contract period.

(3)(A) Paragraph (1) shall not apply to highly erodible cropland that is administered on the date of enactment of the Farm Credit Act Amendments of 1987 by—

(i) an institution of the Farm Credit System under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.);

(ii) the Secretary under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.); or

(iii) a private lender.

(B) Notwithstanding any other provision of law, in the case of any highly erodible cropland that is placed in the conservation reserve as a result of this paragraph, the Secretary shall make payments under this subtitle only to family farmers who purchase or lease such cropland and who enter into a contract under this subtitle.

(C) If the Secretary receives contract offers for participation in the program established by this subtitle from owners or operators who satisfy the requirements of paragraph (1) and family farmers who satisfy the requirements of this paragraph, the Secretary shall give priority to the offers submitted by owners or operators who satisfy the requirements of paragraph (1).

(D) As used in this paragraph, the term "family farmer" means an owner or operator (as of the time immediately before such sale or lease) of not larger than a family-size farm located in a State, as

defined by the Secretary for farms in the State under the Consolidated Farm and Rural Development Act.

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TITLE XIII—CREDIT

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INTEREST RATE REDUCTION PROGRAM

SEC. 1320. Effective only for the period beginning on the date of enactment of this Act and ending September 30, [1988] *1993*, the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) is amended by adding after the section added by section 1319 the following:

"SEC. 351. (a) The Secretary shall establish and carry out in accordance with this section an interest rate reduction program for loans guaranteed under this title.

"(b) Under such program, the Secretary shall enter into a contract with, and make payments to, a legally organized institution to reduce during the term of such contract the interest rate paid by a borrower on a guaranteed loan made by such institution if—

"(1) the borrower—

"(A) is unable to obtain sufficient credit elsewhere to finance the actual needs of the borrower at reasonable rates and terms, taking into consideration private and cooperative rates and terms of a loan for a similar purpose and period of time in the community in or near which the borrower resides;

"(B) is otherwise unable to make payments on such loan in a timely manner; and

"(C) has a total estimated cash income during the 12-month period beginning on the date such contract is entered into (including all farm and nonfarm income) that will equal or exceed the total estimated cash expenses to be incurred by the borrower during such period (including all farm and nonfarm expenses); and

"(2) the lender reduces during the term of such contract the annual rate of interest payable on such loan by a minimum percentage specified in such contract.

"(c) In return for a contract entered into by a lender under subsection (b) for the reduction of the interest rate paid on a loan, the Secretary shall make payments to the lender in an amount equal to not more than 50 percent of the cost of reducing the annual rate of interest payable on such loan, except that such payments may not exceed the cost of reducing such rate by more than 2 percent.

"(d) The term of a contract entered into under this section to reduce the interest rate on a guaranteed loan may not exceed the outstanding term of such loan, or 3 years, whichever is less.

"(e)(1) Notwithstanding any other provision of this title, the Agricultural Credit Insurance Fund established under section 309 may be used by the Secretary to carry out this section.

"(2) The total amount of funds used by the Secretary to carry out this section may not exceed $490,000,000.".

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TITLE I—AGRICULTURAL PROGRAMS

Subtitle A—Sale of Notes

SEC. 1001. SALE OF RURAL DEVELOPMENT NOTES.

(a) SALES REQUIRED.—The Secretary of Agriculture, under such terms as the Secretary many prescribe, shall sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act in such amounts as to realize net proceeds to the Government of not less than—

(1) $1,000,000,000 from such sales during fiscal year 1987,

(2) $552,000,000 from such sales during fiscal year 1988, and

(3) $547,000,000 from such sale during fiscal year 1989.

(b) NONRECOURSE SALES.—The second sentence of section 309(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a(e)) is amended by—

(1) inserting "and other obligations" after "Notes"; and

(2) striking out the period at the end thereof and inserting in lieu thereof the following including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes or other obligations sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed had the borrower remained indebted to the Secretary.

(c) CONTRACT PROVISIONS.—Consistent with section 309A(e) of the Consolidated Farm and Rural Development Act, as amended by subsection (b), any sale of notes or other obligations, as described in subsection (a), shall not alter the terms specified in the note or other obligation, except that, on sale, a note or other obligation shall not be subject to the provisions of section 333(c) of the Consolidated Farm and Rural Development Act.

(d) ELIGIBILITY TO PURCHASE NOTES.—Notwithstanding any other provision of law, each institution of the Farm Credit System shall be eligible to purchase notes and other obligations held in the Rural Development Insurance Fund and to service (including the extension of additional credit and all other actions necessary to preserve, conserve, or protect the institution's interest in the purchased notes or other obligations), collect, and dispose of such notes and other obligations, subject only to such terms and conditions as may be agreed to by the Secretary of Agriculture and the purchasing institution and as may be approved by the Farm Credit Administration.

(e) LOAN SERVICING.—Prior to selling any note or other obligation, as described in subsection (a), the Secretary of Agriculture shall require persons offering to purchase the note or other obligation to demonstrate—

(1) an ability or resources to provide such servicing, with respect to the loans represented by the note or other obligation,

that the Secretary deems necessary to ensure the continued performance on the loan; and

(2) the ability to generate capital to provide the borrowers of the loans such additional credit as may be necessary in proper servicing of the loans.

(f) RIGHT OF FIRST REFUSAL.—

(1) IN GENERAL.—Prior to the conduct of a sale of a portfolio of notes or other obligations under this section, the Secretary of Agriculture shall—

(A) determine whether the issuer of any unsold note or other obligation desires to purchase the note or other obligation; and

(B) if so, hold open for 30 days, an offer to sell the note or other obligation to the issuer at a price to be determined under paragraph (2).

(2) DETERMINATION OF OFFERING PRICE.—

(A) AUTHORITY.—The Secretary of Agriculture shall determine, in accordance with subparagraph (B), the price at which a note or other obligation shall be offered for sale under this subsection.

(B) PRICE.—Such price shall be determined by discounting the payment stream of such note or other obligation at the yield on the sale of the portfolio, adjusted for changes in market interest rates, servicing and Sales expenses, and the maturity and interest rate of such note.

(3) PROHIBITIONS.—

(A) PURCHASE OF OBLIGATION NOT TIED TO PURCHASE OF OTHER OBLIGATIONS.—The Secretary of Agriculture shall not require the issuer of any unsold note or other obligation to be offered for sale under this subsection to purchase any other such note or other obligation as a condition of the sale of any such note or other obligation to the issuer.

(B) OFFER TO BE MADE WITHOUT REGARD TO FINANCING.—The Secretary shall offer notes or other obligations for sale to the issuers thereof under this subsection without regard to the manner in which such issuers intend to finance the purchase of such notes or other obligations.

ADDITIONAL VIEWS OF SENATOR KENT CONRAD

I first want to commend Senators Boren and Boschwitz, Chairman and Ranking Minority Member of the Subcommittee on Agricultural Credit, for their long hours of work and diligence in developing what I believe to be essential and workable legislation. I would also note the long hours of dedicated staff work that went into preparing this legislation. In particular, I would like to commend Mr. Michael Dunn and Mr. Edward Barron of the full Committee staff and Ms. Kelleye Eversole and Ms. Julie Hasbargan on the staffs of Senators Boren and Bond respectively for their contributions to reaching workable solutions to opposing viewpoints.

Farm credit legislation is made necessary by the most serious problems in the U.S. economy in a half century. The October 1987 plunge in the stock market punctuated the deepest and longest recession in the agricultural sector since the Great Depression.

Evidence of the sharp decline in agriculture is plentiful: Farm income (adjusted for inflation) has fallen 40 percent in the 1980s from the 1970s. The farmers' share of the consumer food dollar has dropped 50 percent in six years. One third of farmers are rated in trouble by a recent General Accounting Office report, and more banks, particularly farm banks, have failed in the past six years than in all the years since 1933. Without question, the rural economy is in very serious trouble.

S. 1665, the Farm Credit Act of 1987, is intended to help farmers, to preserve the Farm Credit System, to reform and modernize the Farmers Home Administration, and to ameliorate the serious financial problems in the farm sector and prevent them from further damaging the larger economy. It is clear that allowing the largest U.S. credit institution (the Farm Credit System) to default on its bonds would send a shock wave through U.S. credit markets.

The effects of the sharp decline in net farm income are reflected in the sharp decline in farm land values. These sharp declines in the grain producing states make clear the importance of the restructuring requirements for FCS and FmHA. Following is a summary of changes in farm land values over the past six years by region.

FARMLAND PRICE TRENDS: FEB. 1, 1981 TO FEB. 1, 1987 AND FEB. 1, 1986 TO FEB. 1, 1987

[In percent]

State	1981 to 1987	1986 to 1987
Northeast:		
Maine	+69	+9
New Hampshire	+66	+9
Vermont	+66	+9
Massachusetts	+71	+9
Rhode Island	+59	+9

FARMLAND PRICE TRENDS: FEB. 1, 1981 TO FEB. 1, 1987 AND FEB. 1, 1986 TO FEB. 1, 1987—Continued

[In percent]

State	1981 to 1987	1986 to 1987
New York	+20	+13
New Jersey	+75	+36
Pennsylvania	+10	+19
Delaware	−8	+1
Maryland	−28	−3
Lake States:		
Michigan	−39	−11
Wisconsin	−48	−12
Minnesota	−63	−19
Corn Belt:		
Ohio	−53	−7
Indiana	−56	−12
Illinois	−53	−9
Iowa	−64	−11
Missouri	−48	−9
Northern Plains:		
North Dakota	−37	−11
South Dakota	−52	−17
Nebraska	−59	−8
Kansas	−48	−12
Appalachian:		
Virginia	−4	−3
West Virginia	−15	−2
North Carolina	−19	−3
Kentucky	−26	−9
Tennessee	−10	+2
Southeast:		
South Carolina	−22	−9
Georgia	−19	+3
Florida	−10	+2
Alabama	−17	−4
Delta States:		
Mississippi	−35	−13
Arkansas	−39	−10
Louisiana	−47	−27
Southern Plains:		
Oklahoma	−39	−11
Texas	+7	−11
Mountain:		
Montana	−36	−18
Idaho	−32	−12
Wyoming	−23	−2
Colorado	−20	+2
New Mexico	−32	−9
Arizona	−17	+5
Utah	−19	−5
Nevada	−16	+6
Pacific:		
Washington	−19	−11
Oregon	−34	−8
California	−21	−13

Source: Doane's Agricultural Report, Vol. 50, No. 16–5 and United States Department of Agriculture.

ADDITIONAL VIEWS OF SENATOR CHRISTOPHER BOND

I commend my colleagues on the Agriculture Credit Subcommittee for their diligence and hard work in crafting the legislation we are reporting. The problems of the Farm Credit System are complex, and the solutions to their difficulties no less so. Subcommittee Chairman Boren, along with the ranking member, Senator Boschwitz, clearly devoted many hours to the resolution of the range of issues—and I believe the 19–0 vote reporting out the bill is a clear affirmation of our faith in their work.

Therefore I wish to note that my reasons for including my views in this report are not to point out any problems I see in this legislatin, but rather to encourage my colleagues to join in support of our efforts.

Missouri's farmers and ranchers have experienced very good conditions this year; the weather has been favorable, commodity prices have strengthened and land values seem to have stabilized. Livestock producers, specifically cattle and hog producers, have shown large increases in income, although crop producers continue to rely heavily on government support programs.

At the same time, the Farm Credit System recently announced third quarter operating profits of $4 million (following 2 consecutive years of losses totalling $4.8 billion during that period).

Some may wonder why, in the midst of all this improving news, would the Farm Credit System remain desperate for federal assistance. However, I believe that a look below the surface of this news clearly shows the problems remain—several Federal Land Banks problems are actually accelerating. So I would caution those who are enthused about the System-wide results to look behind the aggregate numbers to the individual banks in trouble.

The Farm Credit System, through its Federal Land Banks and Production Credit Associations, is the single largest lender to American agriculture. Currently it holds nearly 26% of the $164 billion worth of ag debt outstanding. This share has fallen in recent years because of the System's financial problems, but the FCS still remains the only ag lender who can provide both long and short term credit—and will stick with agriculture through both boom and bust. In and of itself, continuing this stability and availability of credit may be the most important reason to provide assistance to the System.

WHY IS FCS IN TROUBLE?

Throughout the 1970s the FCS (in particular the FLB) expanded its market share of the total agricultural debt from 21% in 1970, to a peak of nearly 33% in 1982. In fact, the FLB's share doubled, growing from only 22% in 1970 to its peak of 42% in 1983. They

were able to do this by offering very competitive rates during the time agriculture was rapidly expanding.

Unfortunately, like the borrowers who made decisions based on the rapid run up in land values, the FCS was headed for trouble as land values began to fall. Compounding the problems of FBL's was the fact that as interest rates were rising during the late 70's and early 80's, loans were being made to farmers based on the *average* cost of money held by the System, rather than the current, or marginal cost. This management decision meant that, as interest rates were climbing the system could take advantage of their $50–60 billion pool of securities and offer rates to farmers which were several points below the market rates.

And in addition, to further compound the situation, the FLB's were selling *long term* high coupon bonds just when interest rates were peaking. (The FCS sells system-wide bonds to raise the funds to loan to farmers.) During the late 70's and early 80's, the FLBs were in effect borrowing high cost long term funds and then lending it at a *lower* interest rate than they were paying. Many of these 14–15% bonds are still in the System's pool—continuing to keep the Bank's interests rates high.

Of course, as the economy improved and interest rates fell, the FLB's many 8–10 year bonds (which they are paying 15% for the privilege of holding), meant they soon discovered their average cost of funds was now *higher* than their competitors. Borrowers who could, prepaid their loans and left—and the great borrower flight began.

On top of all this, the turmoil in the agriculture economy meant that increasing numbers of farmer-borrowers were unable to make their payments. Thus the System found itself in a position where its own high cost of debt was forcing it into an uncompetitive position, borrowers were leaving, increasing numbers its remaining loans were falling into default, and the value of its collateral continued to decline. It is no wonder the System lost $4.8 billion during 1985–86 (the largest single loss of any financial institution in U.S. history), and that several Land Banks are nearing default.

Basic Goals

I approached the Farm Credit System's problems believing we should follow 5 basic goals in outlining a solution. First, any solution needed to maintain the basic cooperative structure of the System. This means retaining local control, and requirement of stockholder approval of mergers and other major management decisions.

Secondly, we must take steps to reassure borrowers in order to stem their flight. Last year the System lost one billion dollars of loan volume per month as borrowers who could prepaid their loans and found other creditors, or, in other cases simply paid off part of their debt. For both reasons, the System found its income being squeezed by declining loan volume and increasing numbers of nonperforming loans such that today 8 of the 12 Federal Land Banks showed negative interest income in the 3rd Quarter of 1987. One part of this solution was to guarantee the retirement of borrower stock at par value, the other is to provide financial assistance suffi-

cient to allow institutions to offer competively priced credit. S. 1665, as amended by the Committee, does just that.

Third, we need to provide a mechanism for the System to restructure its non-performing loans. These loans are currently a great financial drain on the borrowers who are paying (because they must pay enough to cover the losses associated with these loans), so we must find a way to bring some income in from them. In some instances the solution may be foreclosure, but in many cases the System will receive a higher rate of return by restructuring a troubled loan.

Fourth, I believe we must plan for the System's future. Congress does not want to deal with the System' financing every time there is a downturn in the farm economy, thus we should set up mechanisms which would both create incentives for prudent management, and would also insure that the System turns to itself first for financial assistance. In this same vein, we must also protect against the urge to micro-manage the System—clearly we do not want a bill which places so many restrictions and requirements on an institution that it cannot offer competitive prices and terms to its borrowers. I believe S. 1665 does resist this temptation. This bill also sets up a reserve fund (beginning in 1992) which will act as an insurance fund in the future. Modeled after FDIC, I believe this will provide an excellent backstop for the cyclical turns in the ag economy.

And fifth, we must insure that the taxpayers' risk is as little as possible. This calls for the System to use any and all self-help measures available, as well as requiring that the System pay back monies provided to ailing institutions. Our bill will provide up to $4 billion in government guaranteed bonds which are issued by the newly created Financial Assistance Corporation, but the assistance would not simply be there for the askng. To qualify, institutions must develop a business plan which cuts their operating expenses, requires a review of their troubled loans, and shows an ability to continue to provide credit on reasonable terms.

Legislation I introduced with Senator Boschwitz early this summer embodied these basic principles, and at that time I called our bill a building block for a broader, more comprehensive package. I am certainly pleased to see that is what occured.

Other Provisions

This Farm Credit legislation also includes other important agricultural credit provisions. First, the bill creates a secondary market for agricultural loans. This is important because it will allow small, rural banks to provide long term agricultural real estate loans. By reducing lenders' risk on these loans, a secondary market means more options will be available to borrowers.

The bill also addresses many of the current difficulties facing the Farmer's Home Administration. The bill attempts to streamline the current loan approval, restructuring and appeals process, as well as addressing the homestead, right of first refusal and income release provisions of current law. Many of these issues are currently bogged down by lawsuits related to the cumbersome processes

which now exists. I trust that this section of the bill will resolve these problems.

I believe it is time to take the steps needed to help the Farm Credit System. S. 1665 creates the kind of framework the System needs to recover and once again become a viable lending institution for our nation's agricultural sector. I hope the full Senate will have the opportunity to consider this legislation soon.

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